

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Policy and Rules Concerning the)	CC Docket No. 96-61
Interstate, Interexchange Marketplace)	
)	
Implementation of Section 254(g) of the)	
Communications Act of 1934, as amended)	

SECOND REPORT AND ORDER

Adopted: October 29, 1996

Released: October 31, 1996

By the Commission: Commissioner Chong issuing a separate statement.

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I. INTRODUCTION

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted.¹ The goal of the 1996 Act is to establish "a pro-competitive, de-regulatory national policy framework" in order to make available to all Americans advanced telecommunications and information technologies and services "by opening all telecommunications markets to

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

competition."² An integral element of this framework is the requirement in Section 10 of the Communications Act of 1934, as amended (Communications Act), that the Commission forbear from applying any provision of the Communications Act, or any of the Commission's regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission makes certain specified findings with respect to such provisions or regulations.³

2. On March 25, 1996, the Commission released a Notice of Proposed Rulemaking⁴ initiating a review of its regulation of interstate, domestic, interexchange telecommunications services in light of the passage of the 1996 Act and the increasing competition in the interexchange market over the past decade. In this Report and Order (Order), we consider issues raised in the Notice relating to tariff forbearance. We also consider, but decline to act at this time on, the Commission's proposal in the Notice to allow nondominant interexchange carriers to bundle customer premises equipment (CPE) with interstate, interexchange telecommunications services.⁵

3. For the reasons set forth below, we conclude that the statutory forbearance criteria in Section 10 are met for the Commission to no longer require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 for their interstate, domestic, interexchange services. We conclude that a policy of complete detariffing (i.e., not permitting nondominant interexchange carriers to file tariffs) for such services would further advance the

² Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996) (Joint Explanatory Statement).

³ 47 U.S.C. § 160(a).

⁴ Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Notice of Proposed Rulemaking, 11 FCC Rcd 7141 (1996) (Notice).

⁵ In the Notice, the Commission also raised issues relating to: market definition; separation requirements for nondominant treatment of local exchange carriers in their provision of certain interstate, interexchange services; and implementation of the rate averaging and rate integration requirements in new section 254(g) of the Communications Act. On August 7, 1996, the Commission issued a Report and Order implementing the rate averaging and rate integration requirements. See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564 (1996) (Geographic Rate Averaging Order). We will address the market definition and separation requirements in an upcoming order.

In the Notice, the Commission established two pleading cycles for the issues considered in this proceeding. Notice, 11 FCC Rcd at 7194. While many parties filed comments and reply comments in both phases, numerous parties filed only one set of comments and reply comments for both phases. See infra Appendix A. Comments and reply comments cited throughout this Order refer to unified comments and reply comments filed for both phases of this proceeding, or to those filed only in Phase 2 unless specifically noted as Phase 1 comments or reply comments.

statutory objectives of the forbearance provision, Section 10. We therefore order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services within nine months from the effective date of this Order. In addition, we conclude that our decision to order complete detariffing renders moot the contract tariff and reseller issues raised in the Notice.

4. The actions we take here will further the pro-competitive, deregulatory objectives of the 1996 Act by fostering increased competition in the market for interstate, domestic, interexchange telecommunications services. Since the early 1980's, the Commission has gradually adapted its regulatory regime for such services from one in which all interexchange carriers were subject to the full panoply of Title II regulatory requirements, including Section 203 tariff filing requirements, to one in which pricing and other regulatory requirements have been replaced by market forces.⁶ Our decision in this proceeding marks the end of the transformation of the regulatory regime governing interstate, domestic, interexchange services. After our policy of complete detariffing has been implemented, carriers in the interstate, domestic, interexchange marketplace will be subject to the same incentives and rewards that firms in other competitive markets confront. We seek ultimately to accomplish the same result in every telecommunications market, because we believe that effectively competitive markets produce maximum benefits for consumers, carriers and the nation's economy.

5. Our decision to forbear from applying the statutory requirement that compels nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services and to implement a policy of complete detariffing does not signify in any way a departure from our historic commitment to protecting consumers of interstate telecommunications services against anticompetitive practices. We reaffirm our pledge to use our complaint process to enforce vigorously our statutory and regulatory safeguards against carriers that attempt to take unfair advantage of American consumers. Moreover, when interstate, domestic, interexchange services are completely detariffed, consumers will be able to take advantage of remedies provided by state consumer protection laws and contract law against abusive practices.

6. We note that the California Public Utilities Commission recently adopted a complete detariffing regime for intrastate long-distance services offered in California.⁷ We encourage other state regulatory commissions to seek the legislative authority necessary to enable them to adopt a complete detariffing policy when they find, as the California Commission did, that competition is sufficient to obviate the need for tariffing of intrastate long-distance services.

⁶ See infra section II.A.2.

⁷ Public Utilities Commission of the State of California, Rulemaking on the Commission's Own Motion to Establish a Simplified Registration Process for Non-Dominant Telecommunications Firms, R. 94-02-003, Interim Opinion, at Appendix A, Rule 7 (rel. Sep. 20, 1996) (California Detariffing Interim Opinion).

II. FORBEARANCE FROM TARIFF FILING REQUIREMENTS FOR NONDOMINANT INTEREXCHANGE CARRIERS

A. Background

1. The Telecommunications Act of 1996

7. The 1996 Act provides for regulatory flexibility by requiring the Commission to forbear from applying any regulation or any provision of the Communications Act, to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain conditions are satisfied.⁸ Specifically, the 1996 Act amends the Communications Act to provide that:

[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.⁹

In making the public interest determination, the 1996 Act requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to

⁸ 47 U.S.C. § 160. Section 10 of the Communications Act provides, however, that, except as provided in Section 251(f), the Commission may not forbear from applying the requirements of new Section 251 and new Section 271 until the Commission determines that those requirements have been fully implemented. Id.

⁹ Id.

which forbearance will enhance competition among providers of telecommunications services.¹⁰

2. The Competitive Carrier Proceeding

8. In the Competitive Carrier proceeding, the Commission pursued pro-competitive and deregulatory goals similar to those underlying the 1996 Act.¹¹ The Commission examined how its regulations should be adapted to reflect and promote increasing competition in interexchange telecommunications markets, and sought to reduce or eliminate its tariff filing and facilities authorization requirements for nondominant interexchange carriers.

9. In a series of orders beginning in 1982, the Commission established a permissive detariffing policy for nondominant carriers, pursuant to which such carriers were permitted, although not required, to file tariffs with the Commission.¹² The Commission found that "there was no evidence that it is in the public interest for us to continue receiving streamlined tariff and Section 214 filings from certain specialized common carriers to prevent

¹⁰ 47 U.S.C. § 160(b). New Section 10(b) also provides that, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." Id.

¹¹ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (Competitive Carrier NPRM); First Report and Order, 85 FCC 2d 1 (1980) (First Report and Order); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981) (Competitive Carrier Further NPRM); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (Fourth Report and Order), vacated AT&T Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T Co., 509 U.S. 913 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Report and Order); Sixth Report and Order, 99 FCC 2d 1020 (1985) (Sixth Report and Order), vacated MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the Competitive Carrier proceeding). In Competitive Carrier, the Commission distinguished two kinds of carriers — those with market power (dominant carriers) and those without market power (nondominant carriers). First Report and Order, 85 FCC 2d at 20-21. See also 47 C.F.R. § 61.3(o) ("[D]ominant carrier" is defined as a "carrier found by the Commission to have market power (i.e., the power to control prices)").

¹² See Second Report and Order, 91 FCC 2d 59 (applying permissive detariffing to resellers of terrestrial common carrier services); Fourth Report and Order, 95 FCC 2d 554 (applying permissive detariffing to all other resellers and specialized common carriers, including MCI and GTE Sprint); Fifth Report and Order, 98 FCC 2d 1191 (applying permissive detariffing to domestic satellite carriers, miscellaneous common carriers, carriers providing domestic, interstate and interexchange digital transmission services, and certain affiliates of exchange carriers offering interstate, interexchange services).

them from charging unjust and unreasonable rates or making service unavailable."¹³ The Commission concluded that market forces, together with the Section 208 complaint process and the Commission's ability to reimpose tariff-filing and facilities-authorization requirements, were sufficient to protect the public interest with respect to nondominant interexchange carriers subject to forbearance.¹⁴ The Commission also noted that firms lacking market power could not charge unlawful rates because customers could always turn to competitors.¹⁵

10. In 1985, in the Sixth Report and Order, the Commission established a mandatory detariffing policy for all carriers subject to the Commission's forbearance policy,¹⁶ because it concluded that policy would further its objectives of ensuring just and reasonable rates, and that it could rely instead on market forces, the complaint process, and its ability to reimpose tariff requirements, if necessary, to fulfill its mandate under the Communications Act.¹⁷ In order to facilitate the complaint process and its enforcement of statutory requirements that carriers charge just and reasonable rates, the Commission also ordered carriers to maintain price and service information on file in their offices that could be produced readily upon inquiry from the Commission in order to substantiate the lawfulness of the carriers' rates, terms and conditions for service.¹⁸

11. The Sixth Report and Order subsequently was vacated and remanded by the U.S. Court of Appeals for the D.C. Circuit,¹⁹ on the ground that the Commission lacked the statutory authority to prohibit carriers from filing tariffs.²⁰ The court, however, did not reach the issue of whether the Commission's earlier permissive detariffing orders were valid.²¹ The Commission, accordingly, continued to apply its permissive detariffing policy to nondominant

¹³ Fourth Report and Order, 95 FCC 2d at 578.

¹⁴ Id. at 579.

¹⁵ Sixth Report and Order, 99 FCC 2d at 1028 n.29.

¹⁶ Id. at 1021-22. Carriers subject to forbearance were required to "file supplements to cancel their tariffs on file with the Commission within six months of the effective date of [the Sixth Report and Order]." Id. at 1034.

¹⁷ Id. at 1029. The Commission stated: "Throughout this rulemaking, we have determined that enforcement of Sections 201 and 202 objectives of just and reasonable rates could be effectuated for certain carriers without the filing of tariffs and through market forces and the administration of the complaint process." Id. at n.33.

¹⁸ Id. at 1028, 1034-35.

¹⁹ MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

²⁰ Id. at 1192.

²¹ Id. at 1196.

interexchange carriers until 1992, when the U.S. Court of Appeals for the D.C. Circuit vacated the Commission's permissive detariffing regime in AT&T Co. v. FCC.²² The court, in reviewing an FCC decision disposing of a complaint filed by AT&T against MCI, vacated the Commission's Fourth Report and Order, thereby invalidating the Commission's permissive detariffing policy for nondominant carriers.²³ While stating that it did "not quarrel with the Commission's policy objectives," the court found that the Communications Act as it existed at that time did not give the Commission authority to adopt such a policy.²⁴

12. Prior to the issuance of the U.S. Court of Appeals' decision invalidating the permissive detariffing policy, the Commission adopted a Report and Order in a rulemaking proceeding commenced in response to AT&T's complaint.²⁵ The Commission again determined that permissive detariffing was within its authority under the Communications Act.²⁶ The U.S. Court of Appeals for the D.C. Circuit granted summary reversal of the Commission's order based on the court's earlier AT&T v. FCC decision.²⁷ In affirming the U.S. Court of Appeal's ruling, the Supreme Court found that Section 203(b)(2) of the Communications Act gives the Commission authority to modify the Communications Act's tariff filing requirement, but not to eliminate it entirely.²⁸ The Commission thereafter modified the tariff filing requirements and established a one-day tariff notice period for all nondominant interexchange carriers after again concluding that traditional tariff regulation of nondominant interexchange carriers is not necessary to ensure just and reasonable rates.²⁹

²² AT&T Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T Co., 509 U.S. 913 (1993).

²³ Id. at 737.

²⁴ Id. at 736.

²⁵ See Tariff Filing Requirements for Interstate Common Carriers, CC Docket No. 92-13, Report and Order, 7 FCC Rcd 8072 (1992). While adopted prior to the court's finding that the Commission's permissive detariffing policy exceeded the Commission's statutory authority, the order was released after the court vacated the Fourth Report and Order.

²⁶ Id. at 8074.

²⁷ AT&T Co. v. FCC, Nos. 92-1628, 92-1666, 1993 WL 260778 (D.C. Cir. June 4, 1993) (per curiam), aff'd, MCI Telecommunications Corp. v. AT&T Co., 114 S. Ct. 2223 (1994).

²⁸ MCI Telecommunications Corp. v. AT&T Co., 114 S. Ct. 2223, 2229-31 (1994).

²⁹ Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Memorandum Opinion and Order, 8 FCC Rcd 6752, 6756-57 (1993) (Nondominant Filing Order), vacated on other grounds, Southwestern Bell Corp. v. FCC, 43 F.3d 1515 (D.C. Cir. 1995) (finding the range of rates provision in the Nondominant Filing Order violated Section 203(a) of the Communications Act). The Commission subsequently eliminated the range of rates provision and reinstated the other tariff filing requirements, including the one-day notice period, adopted in the Nondominant Filing Order. Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Order, 10 FCC Rcd 13653 (1995) (Nondominant Filing Order II). In addition,

13. Against this background, Congress enacted Section 401 of the 1996 Act, adding Section 10 to the Communications Act.³⁰ As discussed below,³¹ we find that this section provides the Commission with the forbearance authority that the courts had previously concluded was lacking.³² The Commission now has express authority to eliminate unnecessary regulation and to carry out the pro-competitive, deregulatory objectives that it pursued in the Competitive Carrier proceeding for more than a decade.

B. Analysis of Statutory Requirements

1. Introduction

14. In the Notice, the Commission tentatively concluded that it could make the determinations necessary to forbear from applying the provisions of Section 203 to nondominant carriers with respect to their interstate, domestic, interexchange services.³³ Specifically, the Commission tentatively found that enforcement of the Section 203 tariff filing requirements with respect to nondominant interexchange carriers: (1) is not necessary to ensure that such carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; and (2) is not necessary for the protection of consumers.³⁴ The Commission also tentatively found that forbearing from applying Section 203 to nondominant interexchange carriers is consistent with the public interest.³⁵ The Commission therefore tentatively concluded that it must forbear from applying Section 203 tariff filing requirements to nondominant interexchange carriers with respect to their interstate, domestic, interexchange services.³⁶ The Commission also tentatively concluded that it should not permit nondominant interexchange carriers to file tariffs for such services (that is, that it should adopt a policy of complete detariffing), because it found that allowing nondominant

under the streamlined regulatory procedures for nondominant carriers established in the Competitive Carrier proceeding, such carriers are not subject to price cap regulation, and their tariff filings are presumed to be lawful and do not require cost support data. See First Report and Order, 85 FCC 2d at 31-34. Nondominant carriers also are subject to streamlined Section 214 procedures for the construction, extension or operation of new transmission facilities, as well as for the proposed reduction or discontinuance of service. See id. at 39-49.

³⁰ 47 U.S.C. § 160.

³¹ See infra section II.B.3.

³² See MCI Telecommunications Corp. v. AT&T Co., 114 S. Ct. at 2229-31; MCI Telecommunications Corp. v. FCC, 765 F.2d at 1195.

³³ Notice, 11 FCC Rcd at 7157.

³⁴ Id.

³⁵ Id.

³⁶ Id.

interexchange carriers to file tariffs on a voluntary basis would not be in the public interest, and that complete detariffing would promote competition in the interstate, domestic, interexchange market, deter price coordination, and better protect consumers.³⁷

15. In this section, we consider whether the complete detariffing policy proposed in the Notice satisfies each of the statutory forbearance criteria. We note that our analysis under the first two criteria does not differentiate between our proposal in the Notice to adopt a complete detariffing policy and other detariffing options, such as detariffing on a permissive basis (that is, allowing, but not requiring, nondominant interexchange carriers to file tariffs with respect to their interstate, domestic, interexchange services). Based on the language of the first two statutory criteria, the analysis of all detariffing proposals under the first two forbearance criteria would be the same, because in each case the relevant inquiries are whether tariff filings are necessary to ensure that nondominant interexchange carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory, and whether tariff filings are necessary to protect consumers. However, the third statutory forbearance criterion, which requires an analysis of whether the proposed forbearance is consistent with the public interest, necessitates an analysis specific to the type of forbearance at issue. Accordingly, in addressing the third criterion, we consider whether adoption of a complete, or permissive, detariffing policy is consistent with the public interest.

2. Statutory Criteria for Forbearance

a. Are Tariff Filing Requirements Necessary to Ensure that the Charges, Practices, Classifications or Regulations for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers Are Just and Reasonable, and Are Not Unjustly or Unreasonably Discriminatory?

(1) Background

16. As noted above, the 1996 Act requires the Commission to forbear from applying Section 203 tariff filing requirements to interstate, domestic, interexchange services offered by nondominant interexchange carriers if the Commission determines that the three statutory forbearance criteria are satisfied.³⁸ With respect to the first criterion, the Commission in the Notice tentatively concluded that tariff filing requirements are not necessary to ensure that nondominant interexchange carriers' charges, practices, classifications or regulations for interstate, domestic, interexchange services are just and reasonable, and are not unjustly or unreasonably discriminatory.³⁹ The Commission also tentatively concluded

³⁷ Id. at 7159-61.

³⁸ See supra para. 7.

³⁹ Notice, 11 FCC Rcd at 7157-58.

that the Communications Act's objectives of just, reasonable, and not unjustly or unreasonably discriminatory rates could be achieved effectively through other means, specifically through market forces and the administration of the complaint process. The Commission therefore tentatively concluded that elimination of tariff filing requirements for nondominant interexchange carriers for their interstate, domestic, interexchange offerings would satisfy the first statutory prerequisite for forbearance.⁴⁰

(2) Comments

17. Many commenters concur with the Commission's tentative conclusion that requiring nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange service offerings is unnecessary to ensure that charges, practices, and classifications for such services are just and reasonable, and are not unjustly or unreasonably discriminatory.⁴¹ These parties claim that nondominant carriers cannot rationally impose prices or terms that are unjust, unreasonable, or unjustly or unreasonably discriminatory, because any attempt to do so would result in a loss of market share.⁴² Several of these parties add that the Section 208 complaint process is adequate to remedy any illegal carrier conduct that does occur.⁴³ Thus, they conclude that market forces and the administration of the

⁴⁰ Id.

⁴¹ As discussed above, the analysis of this statutory criterion is the same for both complete and permissive detariffing. Consequently, some commenters that argue that this criterion is met support complete detariffing. See BellSouth Comments at 19; Florida PSC Comments at 2-3 (supporting complete detariffing, but arguing that the Commission should use its general regulatory authority to detariff, rather than its authority under Section 10, which Florida PSC asserts might have repercussions at the state level); Ad Hoc Users Comments at 2-3; API Comments at 4; Cato Institute Comments at 1-2. Other commenters arguing that this criterion is met, however, support detariffing on a permissive basis. See AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2-3; GTE Comments at 3-4; Cable & Wireless Comments at 3-4; UTC Comments at 3-4; Corporate Managers Comments at 2-3 (arguing that the Commission should eliminate tariffing for all carriers, including the BOCs). Sprint urges the Commission to adopt permissive detariffing, and therefore, by implication, suggests that this criterion is met. Sprint Comments at 10. Other commenters agree with the Commission's tentative conclusion only with respect to certain segments of the market. See, e.g., MCI Reply at 9 (individually-negotiated service arrangements); Television Networks Comments at 3 (focusing solely on business customers).

⁴² AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2; GTE Comments at 3-4; Florida PSC Comments at 2-3; UTC Comments at 2-3; API Comments at 4.

⁴³ LDDS Comments at 4-5; NYNEX Comments at 2-3; Florida PSC Comments at 2-3; API Comments at 4. BellSouth contends that detariffing will not adversely affect the Commission's ability to ensure that rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory, because a determination regarding the reasonableness of a particular rate, term, or condition is better suited to the complaint process. BellSouth Comments at 19-20.

complaint process will prevent nondominant interexchange carriers from behaving anticompetitively in violation of Sections 201(b) and 202(a) of the Communications Act.⁴⁴

18. Other commenters, however, argue that market forces are currently inadequate to ensure that the charges, practices, classifications or regulations of nondominant interexchange carriers are just and reasonable, and are not unjustly or unreasonably discriminatory, because the market for interstate, domestic, interexchange services is not yet fully competitive.⁴⁵ In addition, the Tennessee Attorney General and ACTA argue that AT&T is able profitably to charge higher rates than its competitors, demonstrating that existing competition alone does not constrain AT&T's prices, and therefore is not sufficient to regulate the marketplace.⁴⁶

19. Several commenters, including a number of state commissions, argue that in the absence of tariffs, the Section 208 complaint process would not be adequate to ensure that the charges, practices, and classifications of nondominant interexchange carriers are just and reasonable, and not unjustly or unreasonably discriminatory.⁴⁷ These commenters insist that tariffs provide information necessary to enforce Sections 201 and 202 and to investigate fraudulent practices.⁴⁸ In addition, they argue that tariffs ensure accurate information in the

⁴⁴ LDDS Comments at 4-5; NYNEX Comments at 2-3; Florida PSC Comments at 2-3; UTC Comments at 3; API Comments at 4.

⁴⁵ Tennessee Attorney General Comments at 3; Alabama PSC Comments at 2; National Association of Development Organizations Comments at 5-6; National Association of Attorneys General Telecommunications Subcommittee Comments at 2-3; TRA Comments at 10-14. Some BOCs also argue that the interexchange market is not fully competitive, alleging that the three largest interexchange carriers have coordinated their price changes. See *infra* section IV.A (discussing price coordination in the interstate, domestic, interexchange market). These BOCs, however, nevertheless maintain that the first statutory prerequisite for forbearance is met, because it is not the existence of publicly-filed tariffs that enables interexchange carriers to coordinate their prices and raise their rates. BellSouth Comments at 19-20; PacTel Comments at 4.

⁴⁶ Tennessee Attorney General Comments at 3; ACTA Comments at 7-8.

⁴⁷ Alaska Comments at 5-6; Pennsylvania PUC Comments at 8; Louisiana PSC Comments at 4-5; Alabama PSC Comments at 2-5; Ohio Consumers' Counsel Comments at 6; Iowa Utilities Board Comments at 2-3; Tennessee Attorney General Comments at 4; National Association of Attorneys General Telecommunications Subcommittee Comments at 3, 5; CFA/CU Comments at 4; GCI Comments at 2-3; ACTA Comments at 6-7; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6; Excel Comments at 2-3; Casual Calling Coalition Comments at 5-8.

⁴⁸ Alaska Comments at 5-6; Pennsylvania PUC Comments at 8-9; Louisiana PSC Comments at 4-6; Alabama PSC Comments at 2-3; Ohio Consumers' Counsel Comments at 6; Iowa Utilities Board Comments at 2-3; Tennessee Attorney General Comments at 3-5; National Association of Attorneys General Telecommunications Subcommittee Comments at 3, 5; CFA/CU Comments at 4, 6-7; GCI Comments at 2-5; ACTA Comments at 6-7; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6; Excel Comments at 2-3; Casual Calling Coalition Comments at 6-7.

event of a dispute.⁴⁹ They conclude that, without tariffs, consumers and other interested parties will lack adequate information to bring a complaint.⁵⁰ TRA adds that the complaint process is too limited because it focuses only on legal issues, while the tariff review process allows policy analysis as well.⁵¹

20. TRA argues that eliminating tariff filing requirements in a market that is less than perfectly competitive will enable carriers to discriminate against resellers, many of which are small and mid-sized businesses.⁵² TRA claims that the resale market will not survive detariffing, and that such a result is contrary to the objectives of the Communications Act and Commission policy, which recognizes that a vibrant resale market provides residential and small business customers with access to lower rates, puts downward pressure on prices, and helps prevent discriminatory pricing by increasing the number of parties offering similar services.⁵³

(3) Discussion

21. We adopt the tentative conclusion in the Notice that tariffs are not necessary to ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. We conclude, consistent with the AT&T Reclassification Order, that the high churn rate among consumers of interstate, domestic, interexchange services indicates that consumers find the services provided by interexchange carriers to be close substitutes, and that consumers are likely to switch carriers in order to obtain lower prices or more favorable terms and conditions.⁵⁴ In addition, as we found in the AT&T

⁴⁹ Eastern Tel Comments at 7; Pennsylvania Office of Consumer Advocate Comments at 3; Iowa Utilities Board Comments at 2; Casual Calling Coalition Comments at 11.

⁵⁰ Alaska Comments at 5-6; Alabama PSC Comments at 2-3; Ohio Consumers' Counsel Comments at 6; Pennsylvania Office of Consumer Advocate Comments at 3; Tennessee Attorney General Comments at 4; CFA/CU Comments at 4, 6-7; GCI Comments at 3-5; ACTA Comments at 7; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6.

⁵¹ TRA Comments at 21.

⁵² TRA Comments at 10-14; TRA Reply at 13.

⁵³ TRA Comments at 7-8, 13-14 (citing previous Commission statements on the public benefits that resale of telecommunications generates).

⁵⁴ See Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier, Order, 11 FCC Rcd 3271, 3305-07 (1995) (AT&T Reclassification Order), recon. pending; see also AT&T Comments at 18 n.17 (indicating that in 1994, nearly 30 million customers changed their presubscribed carriers).

Reclassification Order, residential and small business customers are highly demand-elastic,⁵⁵ and will switch carriers in order to obtain price reductions and desired features.⁵⁶ Because of the high elasticity of demand for interstate, domestic, interexchange services, we find it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Section 201 or 202 of the Communications Act, because any attempt to do so would cause their customers to switch to different carriers.⁵⁷ Thus, we believe that market forces will generally ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. Moreover, if nondominant interexchange carriers service offerings violate Section 201 or Section 202 of the Communications Act, we have other, more effective means of remedying such conduct. Specifically, we can address any illegal carrier conduct through the exercise of our authority to investigate and adjudicate complaints under Section 208.⁵⁸

22. We also reject the unsupported suggestion that current levels of competition are inadequate to constrain AT&T's prices.⁵⁹ In the AT&T Reclassification Order, we found that AT&T cannot unilaterally exercise market power in the interstate, domestic, interexchange market.⁶⁰ We based this finding on, *inter alia*, AT&T's declining market share,⁶¹ the supply elasticity in this market,⁶² the fact that both residential and business customers are highly

⁵⁵ The own-price elasticity of demand of a firm measures the responsiveness in the demand for that firm's services to changes in that firm's prices, given that competitors' prices are held constant. *See, e.g.,* James W. Henderson & Richard E. Quandt, Microeconomic Theory: A Mathematical Approach 210-11 (3d ed. 1980).

⁵⁶ AT&T Reclassification Order, 11 FCC Rcd at 3305-07.

⁵⁷ *See* AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; BellSouth Comments at 19-20; Frontier Comments at 2-3; GTE Comments at 3-4; Cable & Wireless Comments at 4; Florida PSC Comments at 2-3; Ad Hoc Users Comments at 2-3; UTC Comments at 3; Corporate Managers Comments at 3; API Comments at 4; Cato Institute Comments at 2; *see also* First Report and Order, 85 FCC 2d at 20-21.

⁵⁸ 47 U.S.C. § 208.

⁵⁹ *See* Tennessee Attorney General Comments at 3; ACTA Comments at 7-8.

⁶⁰ AT&T Reclassification Order, 11 FCC Rcd at 3346-47.

⁶¹ *Id.* at 3307-08; *see also* Report, Long Distance Market Share, First Quarter 1996, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission at 9 (rel. July 12, 1996) (showing that AT&T's share of all minutes has declined from 84.2 percent in the third quarter of 1984 to 55.3 percent in the first quarter of 1996).

⁶² AT&T Reclassification Order, 11 FCC Rcd at 3303-05.

demand-elastic,⁶³ and an analysis of AT&T's cost, structure, size, and resources.⁶⁴ The Tennessee Attorney General and ACTA offer no new evidence that would lead us to alter our conclusion that AT&T lacks market power in this market.

23. We also are not persuaded that tariffs are necessary to constrain the prices and practices of nondominant interexchange carriers with respect to interstate, domestic, interexchange services. As discussed below, we find that evidence of tacit price coordination in the market for interstate, domestic, interexchange services is inconclusive.⁶⁵ Moreover, we find that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services may facilitate, rather than deter, price coordination, because under a tariffing regime, all rate and service information is collected in one, central location.⁶⁶ Therefore, we believe that complete detariffing, along with additional, competitive, facilities-based entry into the interstate, domestic, interexchange market, will help deter attempts to increase rates for interstate, domestic, interexchange services through tacit price coordination. We therefore conclude that complete detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers will further the Communications Act's objective that carriers' rates, practices, classifications, and regulations be just, reasonable and not unjustly or unreasonably discriminatory.

24. In the Notice, the Commission acknowledged that the Commission initially relaxed its regulation of nondominant carriers in the Competitive Carrier proceeding in part because it concluded that the availability of service from a nationwide dominant carrier subject to full Title II regulation would further constrain nondominant carriers.⁶⁷ We therefore sought comment on whether the absence of a nationwide dominant carrier should affect our determination to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services.⁶⁸ No commenter addressed this issue, and we conclude that the absence of a dominant interexchange carrier in today's competitive interstate, domestic, interexchange market should not alter our analysis, because nondominant

⁶³ See id. at 3305 (finding that the "high churn rate among residential consumers . . . demonstrates that these customers find the services provided by AT&T and its competitors to be very close substitutes"); see also AT&T Comments at 18 n.17 (indicating that 17-20 percent of consumers change their presubscribed carriers each year).

⁶⁴ AT&T Reclassification Order, 11 FCC Rcd at 3309.

⁶⁵ See infra section IV.A.3.

⁶⁶ See infra paras. 53, 61.

⁶⁷ Notice, 11 FCC Rcd at 7163 (citing First Report and Order, 85 FCC 2d at 28).

⁶⁸ Id.

interexchange carriers cannot successfully price their services anticompetitively in this market.⁶⁹ In addition, the Commission has previously found that market forces effectively discipline nondominant carriers even in the absence of a dominant carrier.⁷⁰

25. We also reject the claim that, without tariffs, consumers and other parties will lack sufficient information to challenge the lawfulness of nondominant interexchange carriers' rates, terms and conditions for domestic service, in particular on the ground that such carriers' rates, practices, and classifications are unjustly or unreasonably discriminatory. In the absence of tariffs, customers will still receive rate information in the same manner they always have, through the billing process. In addition, carriers likely will be obligated to notify their customers of any changes in their rates, terms and conditions for service as part of their contractual relationship.⁷¹ Moreover, tariffs may not be the best vehicle for disclosure of rate and service information for nondominant interexchange carriers to residential and small business customers, because such end-users rarely, if ever, consult these tariff filings, and few of them are able to understand tariff filings even if they do examine them.⁷² We further believe that nondominant interexchange carriers will generally provide customers rate and service information that currently is contained in tariffs, in an accessible format in order to market their services and to retain customers.⁷³ Nevertheless, we acknowledge that, even in a competitive market, nondominant interexchange carriers might not provide complete information concerning all of their interstate, domestic, interexchange service offerings to all

⁶⁹ AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2-3; GTE Comments at 3-4; Florida PSC Comments at 2-3; UTC Comments at 3; API Comments at 4.

⁷⁰ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1478-79 (1994) (Regulatory Treatment of Mobile Services Order) (citing Competitive Carrier First Report and Order, 85 FCC 2d at 31); Erratum, 9 FCC Rcd 2035 (1994); Erratum, 9 FCC Rcd 2156 (1994); Further Notice of Proposed Rulemaking, 9 FCC Rcd 2863 (1994); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services; Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool; GN Docket No. 93-252, PR Docket Nos. 93-144, 89-553, Third Report and Order, 9 FCC Rcd 7988 (1994).

⁷¹ MCI Comments at 16-17; Sprint Comments at 16-19; AT&T Comments at 19; Ameritech Comments at 4; Casual Calling Coalition Comments at 8-9; American Telegram Comments at 2-3; Business Telecom Comments at 5-6; Eastern Tel Comments at 4; Ursus Comments at 7. It is also possible that such notification could be required as a matter of state consumer protection law. Cf. California Detariffing Interim Opinion at Appendix A, Rule 7 (providing for consumer notification upon written request).

⁷² BellSouth Comments at 20; Ad Hoc Users Reply at 12-13; CFA/CU Comments at 8; see also GSA Comments at 10.

⁷³ See BellSouth Comments at 20; Ad Hoc Users Reply at 12-13; cf. National Small Shipments Traffic Conference, Inc. v. Civil Aeronautics Board, 618 F.2d 819, 824 (D.C. Cir. 1980) (quoting the Civil Aeronautics Board's finding that "a carrier's ability to successfully market its services to the public depends in part on its success in informing potential customers what its charges will be and what services it offers").

consumers, and that some consumers may not be able to determine the particular rate plans that are most appropriate for them, based on their individual calling patterns.⁷⁴ Accordingly, and in light of considerations regarding the enforcement of the 1996 Act's geographic rate averaging and rate integration requirements, we will require carriers to provide rate and service information to the public, as we discuss below.⁷⁵ In addition, as the Commission did in the Sixth Report and Order, we will require nondominant interexchange carriers to maintain price and service information and to make such information available on a timely basis to the Commission upon request.⁷⁶ We therefore conclude that, in the absence of tariffs for nondominant carriers' interstate, domestic, interexchange services, consumers and other parties will have access to sufficient information about such services for purposes of bringing complaints.

26. We reject TRA's claim that the complaint process is inadequate to protect consumers. TRA maintains that the Commission addresses only legal issues in a complaint proceeding, whereas in the tariff review process, the Commission can address policy issues as well.⁷⁷ TRA is incorrect, however. Regardless of whether the inquiry is part of a complaint or a tariff review proceeding, the Commission can address all relevant legal and policy issues. In the particular context of Section 208 complaint proceedings, we will continue to examine legal, and, where appropriate, policy matters to give full effect to the requirements that a carrier's rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory, as well as the requirements of our rules and orders.

27. Contrary to TRA's assertions that the resale market will not survive in the absence of tariffs,⁷⁸ we conclude that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will not

⁷⁴ For example, nondominant interexchange carriers might engage in targeted advertising concerning particular discounts and rate plans that might be the least costly, and most appropriate, plan for some, but not all, consumers.

⁷⁵ In reviewing the proposed information collection requirements in the Notice, including the proposal to eliminate tariff filing requirements by nondominant interexchange carriers for interstate, domestic, interexchange services, the Office of Management and Budget "strongly recommend[ed] that the [Commission] investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information." Notice of Office of Management and Budget Action, OMB No. 3060-0704 (June 12, 1996).

⁷⁶ See infra para. 87; see also Sixth Report and Order, 99 FCC 2d at 1028, 1034-35. On June 12, 1996, the Office of Management and Budget approved the Commission's proposal in the Notice, 11 FCC Rcd at 7162-63, to require nondominant interexchange carriers to maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request. Notice of Office of Management and Budget Action, OMB No. 3060-0704 (June 12, 1996).

⁷⁷ TRA Comments at 21.

⁷⁸ Id. at 13-14.

affect such carriers' obligations under Sections 201 and 202 to charge rates, and to impose practices, classifications and regulations, that are just and reasonable and not unjustly or unreasonably discriminatory. In addition, as discussed below, we will require nondominant interexchange carriers to provide rate and service information on all of their interstate, domestic, interexchange services to consumers, including resellers.⁷⁹ Thus, resellers will be able to determine whether nondominant interexchange carriers have imposed rates, practices, classifications or regulations that unreasonably discriminate against resellers, and to bring a complaint, if necessary.⁸⁰

28. For the reasons discussed herein, we conclude that tariffs are not necessary to ensure that the rates, practices, classifications, and regulations of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. We therefore conclude that the proposal to adopt complete detariffing meets the first of the statutory forbearance criteria.

b. Are Tariff Filing Requirements for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers Necessary for the Protection of Consumers?

(1) Background

29. In the Notice, the Commission tentatively concluded that requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services is not necessary to protect consumers, and that such tariff filing requirements could harm consumers by undermining the development of vigorous competition.⁸¹

(2) Comments

30. A number of parties support the Commission's tentative conclusion that requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange service offerings is not necessary to protect consumers.⁸² Several of these

⁷⁹ See infra paras. 84-86.

⁸⁰ See AT&T Comments at 37-38 (arguing that the market will discipline any carrier that attempts to harm consumers and that the complaint process will serve as an additional safeguard for customers to challenge revisions to long-term service arrangements).

⁸¹ Notice, 11 FCC Rcd at 7159.

⁸² As discussed above, the analysis of this statutory criterion is the same for both complete and permissive detariffing. Consequently, some commenters arguing that this criterion is met, support complete detariffing. See BellSouth Comments at 20-21; Florida PSC Comments at 1-3 (supporting complete detariffing, but arguing that the Commission should use its general regulatory authority, rather than its authority under Section 10, to detariff); Ad Hoc Users Comments at 2-3; API Comments at 4; Cato Institute Comments at 2; Television

parties claim that nondominant interexchange carriers cannot rationally charge prices, or impose terms and conditions that harm consumers without losing customers.⁸³ In addition, many parties assert that the complaint process is adequate to remedy any illegal carrier conduct that violates the Communications Act and harms consumers.⁸⁴

31. Several commenters also support the Commission's tentative conclusion that tariff filing requirements actually harm consumers by impeding the development of vigorous competition and by leading to higher rates.⁸⁵

32. A number of state commissions and other commenters assert, however, that, without tariffs, the complaint process would not be adequate to protect consumers.⁸⁶ They claim that the complaint process is cumbersome, expensive and time-consuming,⁸⁷ and that without tariffs, consumers will lack sufficient information on which to base a complaint that a carrier has violated Section 201 or 202, or failed to comply with the rate averaging and rate integration requirements of Section 254(g).⁸⁸ A number of state commissions and other

Networks Comments at 3. Other commenters arguing that this criterion is satisfied, however, support detariffing on a permissive basis. See AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2-3; GTE Comments at 3-4; Cable & Wireless Comments at 4; UTC Comments at 2; Corporate Managers Comments at 2. Sprint urges the Commission to adopt permissive detariffing, and therefore, by implication, suggests that this criterion is met. Sprint Comments at 10. MCI argues that this criterion is met only for individually negotiated service agreements. MCI Reply at 9.

⁸³ AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2-3; GTE Comments at 3-4; Cable & Wireless Comments at 4; Florida PSC Comments at 2-3; Ad Hoc Users Comments at 2-3; UTC Comments at 2; API Comments at 4; Cato Institute Comments at 2.

⁸⁴ LDDS Comments at 4-5; GTE Comments at 3 n.4; Florida PSC Comments at 2-3; UTC Comments at 3; API Comments at 4.

⁸⁵ NYNEX Comments at 3; BellSouth Comments at 17; Corporate Managers Comments at 4-5; UTC Comments at 4; API Comments at 5.

⁸⁶ Alaska Reply at 10-11; Pennsylvania PUC Comments at 8-10; Louisiana PSC Comments at 4-6; Alabama PSC Comments at 4; Ohio Consumers' Counsel Comments at 6; Iowa Utilities Board Comments at 2-3; Tennessee Attorney General Comments at 4; National Association of Attorneys General Telecommunications Subcommittee Comments at 3, 5; CFA/CU Comments at 7; GCI Comments at 5; ACTA Comments at 6-7; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6; Excel Comments at 2-3; Casual Calling Coalition Comments at 5-8; Hunter Comments at 1; Lee Comments at 1; Ward Comments at 1; Orlic Comments at 1; Stark Comments at 1; Loflin Comments at 1-2; Sussman Comments at 1-2. MCI argues that tariffs are necessary to protect consumers that purchase mass market services offered mainly to residential and small business customers. MCI Reply at 9-14.

⁸⁷ Alabama PSC Comments at 4; GCI Comments at 5; TRA Comments at 21; ACTA Comments at 10-11.

⁸⁸ Alaska Comments at 5-6; Alabama PSC Comments at 2-5; Ohio Consumers' Counsel Comments at 5-6; Pennsylvania Office of Consumer Advocate Comments at 3; Tennessee Attorney General Comments at 4; CFA/CU Comments at 4, 6-7; GCI Comments at 2-5; ACTA Comments at 6-7; TRA Comments at 6-7;

parties also assert that detariffing will impede state regulatory or law enforcement functions, because state officials depend on information contained in tariffs filed with the Commission to protect consumers, to prevent fraudulent practices, and to promote state objectives and policies, such as ensuring that rates for intraLATA services are no higher than those for interLATA services.⁸⁹ In addition, some state commissions are concerned that tariff forbearance by the Commission might preempt state tariff filing requirements because Section 10(e) of the Communications Act provides that "a State commission may not continue to apply or to enforce any provision of this Act that the Commission has determined to forbear from applying."⁹⁰ Several parties add that tariffs also ensure that the Commission has access to accurate information in the event of a dispute.⁹¹

33. The Ad Hoc Users and BellSouth maintain, however, that, even in the absence of tariffs, carriers will make price and service information available to the public through methods such as advertising, bill inserts and brochures; and that those methods are more effective at informing consumers than tariff filings, which are not readily available to consumers and which most consumers therefore never examine.⁹²

34. Some commenters suggest that, if the Commission detariffs, the Commission should limit forbearance from tariff filing requirements to individually-negotiated service arrangements.⁹³ They urge the Commission to retain tariff filing requirements for mass market services offered to residential and small business customers because, they claim, tariffs are necessary to protect consumers of such services.⁹⁴

Telecommunications Information Services Comments at 2; GSA Comments at 5-6; Casual Calling Coalition Comments at 7-8.

⁸⁹ Louisiana PSC Comments at 4-5; Pennsylvania PUC Comments at 8; Iowa Utilities Board Comments at 3; Tennessee Attorney General Comments at 3; Alabama PSC Comments at 2; National Association of Attorneys General Telecommunications Subcommittee Comments at 2-3; Eastern Tel Reply at 3-4; WinStar Reply at 4.

⁹⁰ 47 U.S.C. § 160(e); see Louisiana PSC Comments at 1-3; Florida PSC Comments at 4; see also New York Department of Public Service Reply at 1; Louisiana PSC Reply at 2 (both arguing that the Commission cannot preclude states from regulating intrastate, interexchange services); Florida PSC Comments at 4, 6 (arguing that the Commission should use its general regulatory powers rather than the forbearance provision in the 1996 Act to implement detariffing).

⁹¹ Eastern Tel Comments at 7; Pennsylvania Office of Consumer Advocate Comments at 3; Iowa Utilities Board Comments at 2; Casual Calling Coalition Comments at 11.

⁹² BellSouth Comments at 20; Ad Hoc Users Reply at 12-13.

⁹³ MCI Comments at 3; Sprint Comments at 5; CFA/CU Comments at 2; GCI Comments at 2.

⁹⁴ MCI Comments at 3; Sprint Comments at 11-14; CFA/CU Comments at 2; GCI Comments at 2.

35. In addition, American Telegram argues that tariffs are necessary to protect consumers with respect to terms and conditions, but not rates and charges, of nondominant interexchange carriers. American Telegram asserts that tariffs are necessary to protect consumers with respect to terms and conditions of service, because, without tariffs, each customer would have to challenge its individual contract with the carrier in order to establish the illegality of the carrier's terms or conditions for service.⁹⁵ American Telegram claims that, by contrast, when a tariff is challenged, any changes to the tariffed terms and conditions apply automatically to all customers of that service.⁹⁶

(3) Discussion

36. We adopt the tentative conclusion in the Notice that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services are not necessary to protect consumers. Rather, as discussed above,⁹⁷ we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Sections 201 and 202 of the Communications Act. We therefore conclude that market forces, our administration of the Section 208 complaint process, and our ability to reimpose tariff filing requirements, if necessary, are sufficient to protect consumers.

37. We also adopt the tentative conclusion that in the interstate, domestic, interexchange market, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services may harm consumers by impeding the development of vigorous competition, which could lead to higher rates.⁹⁸ We agree with NYNEX that "forbearance will promote competition and deter price coordination, which can threaten competitive benefits."⁹⁹ By promoting competition, detariffing will better protect consumers against the imposition of rates, terms, or conditions that violate the Communications Act.

38. We reject the argument that, for interstate, domestic, interexchange services offered by nondominant interexchange carriers, the complaint process is inadequate to protect consumers. As an initial matter, we note that we are not simply relying on the complaint process to protect consumers. Rather, as set forth above, we believe that market forces,

⁹⁵ American Telegram Comments at 3.

⁹⁶ American Telegram Comments at 3. American Telegram urges the Commission to detariff nondominant interexchange carriers' rates and charges, but to allow such carriers to tariff terms and conditions. Id.

⁹⁷ See supra para. 21.

⁹⁸ See infra paras. 53-54.

⁹⁹ NYNEX Comments at 3; see also BellSouth Comments at 17; Corporate Managers Comments at 4-5; UTC Comments at 4; API Comments at 5.

together with the complaint process, will adequately protect consumers. In addition, we find that our complaint process is adequate to redress any harm to consumers should a nondominant interexchange carrier establish prices, or impose terms and conditions, that violate Sections 201 or 202, or engage in other conduct that violates the Communications Act or our regulations.¹⁰⁰ Moreover, we note that in the absence of tariffs, consumers will be able to pursue remedies under state consumer protection and contract laws in a manner currently precluded by the "filed-rate" doctrine.¹⁰¹

39. While we agree with those commenters that argue that the Commission and the public may need access to information concerning carriers' rates, terms and conditions to ensure carrier compliance with the requirements of Sections 201, 202, and 254(g) of the Communications Act,¹⁰² we are not persuaded that tariffs filed pursuant to Section 203 are the only, or most effective, means of disseminating such information. As an initial matter, we note that the majority of complaints by consumers about the lawfulness of carriers' rates, terms, or conditions for interstate, domestic, interexchange services are based on information obtained through the billing process, rather than information obtained from carriers' tariffs. As set forth above, we believe that nondominant interexchange carriers likely will provide rate and service information currently contained in tariffs to their customers in order to establish a legal relationship with such customers or as part of the billing process.¹⁰³ Moreover, nondominant carriers likely will publicize their rates, terms and conditions for service in order to maintain, or improve, their competitive positions in the market.¹⁰⁴ We therefore conclude that the public will have access to sufficient information to bring to the Commission's attention possible violations of the Communications Act without the risk of anticompetitive effects inherent in tariff filing requirements.

40. Additionally, we find no basis for the claim that the detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers will significantly impede state regulatory or law enforcement functions. The rules we adopt in this proceeding will not interfere with, and in fact may facilitate, a state agency's ability to obtain directly

¹⁰⁰ The Commission will address rules related to the complaint process in an upcoming proceeding.

¹⁰¹ See, e.g., California Detariffing Interim Opinion, at Appendix A. For a discussion of the "filed-rate" doctrine, see infra note 122 and para. 55.

¹⁰² See Alaska Comments at 4; Pennsylvania PUC Comments at 8; Louisiana PSC Comments at 4-5; Alabama PSC Comments at 2-3; Ohio Consumers' Counsel Comments at 5-6; Iowa Utilities Board Comments at 2-3; Tennessee Attorney General Comments at 4; National Association of Attorneys General Telecommunications Subcommittee Comments at 3-4; CFA/CU Comments at 4-5; GCI Comments at 2-3; ACTA Comments at 9-10; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6; Excel Comments at 2-3; Casual Calling Coalition Comments at 5-8.

¹⁰³ See supra para. 25.

¹⁰⁴ See supra para. 25.

from carriers price and service information regarding interstate, domestic, interexchange services.¹⁰⁵ Our action here also does not affect state tariff filing requirements for intrastate services.¹⁰⁶ Section 10(e) of the Communications Act, which provides that "a State commission may not continue to apply or to enforce any provision of this Act that the Commission has determined to forbear from applying,"¹⁰⁷ does not prohibit states from requiring nondominant interexchange carriers to file tariffs with respect to their intrastate, interexchange services based on our action here.

41. We reject the suggestion that tariffs are necessary to protect consumers of mass market interstate, domestic, interexchange services provided by nondominant interexchange carriers, and therefore that the Commission should limit forbearance only to individually-negotiated service arrangements. We find that the reasons supporting our conclusion that tariff filings are not necessary to protect consumers of interstate, domestic, interexchange services provided by nondominant interexchange carriers apply to all such services, and not only to those provided pursuant to individually-negotiated arrangements. Specifically, any increase in competition resulting from the elimination of tariffs will redound to the benefit of consumers of all interstate, domestic, interexchange services. For example, we believe that eliminating tariffs for mass market services will increase carriers' incentive to reduce prices for such services, and reduce their ability to engage in tacit price coordination. In addition, detariffing of mass market services will likely provide greater protection to consumers, because, as discussed below, carriers will likely be required, as a matter of contract law, to give customers advance notice before instituting changes that adversely affect customers.¹⁰⁸ Carriers will also continue to provide rate information to customers as part of the billing process, and in order to market their services and to retain customers.¹⁰⁹

42. Similarly, we do not agree with American Telegram's claim that tariffs are necessary to protect consumers with respect to terms and conditions, but not rates and charges, of interstate, domestic, interexchange services provided by nondominant interexchange carriers. Just as we believe that competition is sufficient to ensure that nondominant interexchange carriers' charges for interstate, domestic, interexchange services are just and reasonable, and not unreasonably discriminatory, and to protect consumers, we believe that competitive forces will ensure that nondominant carriers' non-price terms and conditions are reasonable. Moreover, we concur with BellSouth that even non-price tariff

¹⁰⁵ See infra section II.C.

¹⁰⁶ See Louisiana PSC Comments at 3; Florida PSC Comments at 1-2; Eastern Tel Reply at 3; see also New York Department of Public Service Reply at 1; Louisiana PSC Reply at 2 (both arguing that the Commission cannot preclude states from regulating intrastate, interexchange services).

¹⁰⁷ 47 U.S.C. § 160(e).

¹⁰⁸ See infra para. 56.

¹⁰⁹ See supra para. 25.

filings can be used to facilitate tacit coordination by carriers.¹¹⁰ In addition, we reject American Telegram's argument that tariffs concerning nondominant carriers' terms and conditions for interstate, domestic, interexchange service are necessary to protect consumers, because, without such tariffs, each customer seeking to challenge a carrier's terms or conditions would have to show that its individual contract is unlawful.¹¹¹ Nondominant interexchange carriers are likely to use standard contracts for most services rather than individually negotiate a different contract with each customer. As a result, following a successful challenge to a carrier's standard service agreement, that carrier is likely to modify the unlawful contract with all of its customers, rather than face additional complaints or litigation in which the previous determination that the contract is unlawful would likely be given preclusive effect. As in nearly every other business that is conducted without tariffs, we find that tariffs by nondominant interexchange carriers for interstate, domestic, interexchange services are not necessary to protect consumers. In the absence of such tariffs, consumers will not only have our complaint process, but will also be able to pursue remedies under state consumer protection and contract laws.¹¹²

43. For the reasons discussed herein, we conclude that tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers. We therefore conclude that the proposal to adopt complete detariffing meets the second of the statutory forbearance criteria.

c. Is Forbearance From Applying Section 203 Tariff Filing Requirements to the Interstate, Domestic, Interexchange Services Offered By Nondominant Interexchange Carriers Consistent With the Public Interest?

(1) Background

44. The third statutory criterion requires us to determine whether forbearance from applying Section 203 tariff filing requirements to the interstate, domestic, interexchange services of nondominant interexchange carriers is consistent with the public interest.¹¹³ In making this determination, the statute specifically requires us to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.¹¹⁴ In addition, Section

¹¹⁰ See BellSouth Comments at 18 n.58.

¹¹¹ See American Telegram Comments at 3.

¹¹² See, e.g., California Detariffing Interim Opinion, at Appendix A.

¹¹³ 47 U.S.C. § 160(a).

¹¹⁴ Id. at § 160(b).

10(b) provides that, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest."¹¹⁵ In the Notice, the Commission tentatively concluded that it should not permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services of nondominant interexchange carriers, because complete detariffing of such services will promote competition and deter price coordination in the interstate, domestic, interexchange market, and will better protect consumers.¹¹⁶

(2) Comments

45. Several commenters, including large consumers of telecommunications services, agree with the Commission's tentative conclusion that complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange services is in the public interest.¹¹⁷ These commenters argue that allowing nondominant interexchange carriers to continue to file tariffs undermines the development of vigorous competition because: (1) tariffs delay a carrier's ability to respond to market changes;¹¹⁸ (2) even under streamlined tariff filing procedures, the preparation, filing, and defense of tariffs imposes substantial uneconomic costs on carriers;¹¹⁹ (3) absent tariffs, a carrier could no longer refuse to accommodate a customer's request for services tailored to its specific needs on the ground that the request is beyond the scope of the carrier's tariff;¹²⁰ (4) tariffs reduce incentives to engage in competitive price discounting, because competitors can respond to any price change before it has the desired effect of capturing market share.¹²¹ Some of these commenters additionally argue that complete detariffing would eliminate the possible invocation of the "filed-rate" doctrine.¹²²

¹¹⁵ Id.

¹¹⁶ Notice, 11 FCC Rcd at 7159-61.

¹¹⁷ Ad Hoc Users Comments at 4; API Comments at 5-6; Networks Comments at 3; BellSouth Comments at 17-18; Florida PSC Comments at 3-4 (supporting complete detariffing, but arguing that the Commission should use its general regulatory authority, rather than its authority under Section 10, to detariff); Cato Institute Comments at 3-4; GSA Comments at 8-10.

¹¹⁸ BellSouth Comments at 17.

¹¹⁹ Id. at 17, Florida PSC Comments at 4; API Comments at 5.

¹²⁰ BellSouth Comments at 20; Ad Hoc Users Reply at 10-11; API Reply at 6.

¹²¹ BellSouth Comments at 17-18; API Comments at 5.

¹²² It is well established that, pursuant to the "filed-rate" doctrine, in a situation where a filed tariff rate, term or condition differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to assess the tariff rate, term, or condition. See Armour Packing Co. v. United States, 209 U.S. 56 (1908) (Armour Packing); American Broadcasting Cos., Inc. v. FCC, 643 F.2d 818 (D.C. Cir. 1980); see also

Several parties further argue that tariffs facilitate coordinated pricing by enabling carriers to ascertain their competitors' rates, terms, and conditions for service at one, central location.¹²³ Finally, APCC argues that forbearance from tariff filing requirements would eliminate a regulatory requirement that is especially burdensome on small carriers.¹²⁴

46. Interexchange carriers and other commenters contend that complete detariffing is not in the public interest, because prohibiting nondominant interexchange carriers from filing tariffs with respect to interstate, domestic, interexchange services will impede competition and increase carriers' costs.¹²⁵ Specifically, these parties argue that complete detariffing would: (1) significantly increase transaction costs by forcing nondominant interexchange carriers to conclude literally millions of written agreements with customers in order to establish legally enforceable contractual relationships;¹²⁶ (2) make casual calling

Aero Trucking, Inc. v. Regal Tube Co., 594 F.2d 619 (7th Cir. 1979); Farley Terminal Co., Inc. v. Atchison, T. & S.F. Ry., 522 F.2d 1095 (9th Cir.), cert. denied, 423 U.S. 996 (1975). Consequently, if a carrier unilaterally changes a rate by filing a tariff revision, the newly filed rate becomes the applicable rate unless the revised rate is found to be unjust, unreasonable, or unlawful under the Communications Act. See 47 U.S.C. § 201(b); see also Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990). For arguments that complete detariffing would eliminate the possible invocation of the filed rate doctrine, see Ad Hoc Users Reply at 4-6; API Comments at 8-9; GSA Comments at 8-9; Networks Comments at 4-6; see also CompTel Comments at 16 (arguing that carriers could still invoke the "filed-rate" doctrine with permissive detariffing, but that carriers would not do so in a competitive environment).

¹²³ BellSouth Comments at 17; Florida PSC Comments at 3-4 (noting that "[w]hile firms have various ways to obtain information on competing carriers' prices and service offerings, the tariffing of rates and charges for services presents one means for price coordination that can be eliminated"); Cato Institute Comments at 3; API Comments at 5.

¹²⁴ APCC Comments at 6.

¹²⁵ AT&T Comments at 16-20; MCI Comments at 14-15; MCI Reply at 14-15; Sprint Comments at 10-19; LDDS Comments at 9-11; LCI Comments at 2-5; MFS Comments at 5-7; NYNEX Comments at 3; Ameritech Comments at 1-8; Business Telecom Comments at 5; Eastern Tel Comments at 3; Ursus Comments at 6-7; Telecommunications Information Services Comments at 1; XIOX Comments at 1-2; MOSCOM Comments at 1-2; Pennsylvania Office of Consumer Advocate Comments at 9-10; CFA/CU Comments at 5; Casual Calling Coalition Comments at 8-11; Citizens Utilities Reply at 2-3; Audits Unlimited Comments at 2; Scheraga and Sheldon Comments at 1; Fone Saver Comments at 1; NARUC Comments at 5; ZWT Comments at 1-2; Tennessee Attorney General Comments at 5; Louisiana PSC Comments at 6-7. Some commenters contend that tariffs are needed especially for mass market services provided mainly to residential and small business customers. See, e.g., MCI Comments at 3; Sprint Comments at 9; GCI Comments at 2; CFA/CU Comments at 2; TRAC Comments at 5-6.

¹²⁶ AT&T Comments at 13, 16-18; MCI Comments at 10-12; MCI Reply at 14-15; Sprint Comments at 14-16; LDDS Comments at 9-11, 14; GCI Comments at 3; Cable & Wireless Comments at 7; TRA Comments at 14-15; Ameritech Comments at 1-8; US West Comments at 5; PacTel Comments at 6-7; Business Telecom Comments at 5-6; Eastern Tel Comments at 3; Ursus Comments at 6-7; CFA/CU Comments at 5; MFS Comments at 7; WinStar Comments at 4-5; LCI Comments at 2-5; Citizens Utilities Reply at 2-3; Casual Calling Coalition Comments at 8-11; CompTel Comments at 9-10; Frontier Comments at 5-7; CSE Comments at 6-7.

options more difficult, if not impossible;¹²⁷ and (3) prevent carriers from reacting quickly to market conditions because carriers would be forced to notify each individual customer of any changes to their rates, terms, and conditions before such changes could be effective.¹²⁸ ACTA further argues that any increased transaction costs would be especially burdensome on small carriers that have fewer resources.¹²⁹ LDDS contends that the increased transaction costs due to detariffing would discourage nondominant interexchange carriers from serving certain market segments (e.g., low-usage residential, small business, and casual callers), thereby decreasing competitive choices for these customers.¹³⁰ In addition, several parties argue that tariffs actually promote competition by sending accurate economic signals and disseminating rate and service information to consumers and competitors.¹³¹ In particular, they argue that residential and small business customers require access to such information to obtain the best rates available, and that small nondominant interexchange carriers need such information to compete with larger interexchange carriers.¹³² Several parties further argue that complete

But see Ad Hoc Users Reply at 11-12; API Reply at 4-6 (both arguing that transaction costs would not increase substantially because carriers could still cross-reference a standard publication).

¹²⁷ Casual calling refers to services that do not require a consumer to open an account or otherwise presubscribe to a service, including use of a third-party credit card, collect calling, or dial-around through the use of an access code. Several parties argue that tariffs are essential to casual calling services because callers use the services on a temporary basis without a preexisting contractual relationship, and that tariffs are the only cost-efficient way to establish a legal relationship with casual callers. AT&T Comments at 19-20; Sprint Comments at 3-5, 10-14; LDDS Comments at 10; Casual Calling Coalition Comments at 10-12; Ameritech Comments at 2; Market Dynamics Comments at 13; American Telegram Comments at 2.

¹²⁸ MCI Comments at 16-17; Sprint Comments at 16-19; AT&T Comments at 19; Ameritech Comments at 4; Casual Calling Coalition Comments at 8-9; American Telegram Comments at 2-3; Business Telecom Comments at 5-6; Eastern Tel Comments at 4; Ursus Comments at 7.

¹²⁹ ACTA Comments at 12-13.

¹³⁰ LDDS Comments at 9-11.

¹³¹ Tennessee Attorney General Comments at 3; Casual Calling Coalition Comments at 5-6, 8-9; National Black Data Processors Association Comments at 2; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; Fone Saver Comments at 1; ZWT Comments at 1-2; Ohio Consumers' Counsel Comments at 5; Market Dynamics Comments at 9-10; Business Telecom Comments at 6; Eastern Tel Comments at 4; Ursus Comments at 5; Excel Comments at 3; TRAC Comments at 3-4; GCI Comments at 3-4; NARUC Comments at 5; MFS Comments at 5, 7-8; WinStar Comments at 4-6; Pennsylvania Office of Consumer Advocate Comments at 2-3; Iowa Utilities Board Comments at 2.

¹³² Tennessee Attorney General Comments at 3; Casual Calling Coalition Comments at 5-6, 8-9; National Black Data Processors Association Comments at 2; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; Fone Saver Comments at 1; ZWT Comments at 1-2; Ohio Consumers' Counsel Comments at 5; Market Dynamics Comments at 9-10; Business Telecom Comments at 6; Eastern Tel Comments at 4; Ursus Comments at 5; Excel Comments at 3; TRAC Comments at 3-4; GCI Comments at 3-4; NARUC Comments at 5; MFS Comments at 5, 7-8; WinStar Comments at 4-6; Pennsylvania Office of Consumer Advocate Comments at 2-3; Iowa Utilities Board Comments at 2.

detariffing would not deter price coordination, to the extent it exists,¹³³ both because rate and service information would continue to be available to competitors¹³⁴ and because the existing streamlined tariff filing procedures prevent price signalling.¹³⁵ A few parties suggest that, if the Commission is concerned about tacit price coordination, it could remedy the problem by requiring nondominant interexchange carriers to file tariffs on no more than one day's notice, rather than not permitting such carriers to file tariffs.¹³⁶

47. Interexchange carriers and several other commenters that oppose complete detariffing contend that permissive detariffing would be consistent with the public interest. They maintain that: (1) permissive detariffing would be the most deregulatory and pro-competitive option because carriers could determine the most efficient means to establish contractual relations with their customers (e.g., carriers could file tariffs for such mass market offerings as residential and small business services, reducing transactions costs to carriers and consumers);¹³⁷ (2) the "filed-rate" doctrine would no longer apply if the Commission adopted a permissive detariffing regime, because the tariffed rate would no longer be the only legally permissible rate;¹³⁸ (3) price coordination would be difficult, if not impossible, with permissive detariffing because carriers would at best have fragmentary information concerning

¹³³ In the Notice, the Commission sought comment on whether tacit price coordination exists in the domestic interstate, interexchange market and on the best method to deal with such coordination to the extent it exists. See infra section IV.A.

¹³⁴ MCI Comments at 12; LDDS Comments at 11-12; PacTel Comments at 4; Ameritech Comments at 8; TRA Comments at 16; GCI Comments at 4; Frontier Comments at 3-4; Alabama PSC Comments at 3; Ohio Consumers' Counsel Comments at 8; Louisiana PSC Comments at 8; Pennsylvania PUC Comments at 8-9, 11; Casual Calling Coalition Comments at 7 n.12; Tennessee Attorney General Comments at 5; Florida PSC Comments at 3; ACTA Comments at 11-12.

¹³⁵ See Sprint Comments at 22; Casual Calling Coalition Comments at 6-7; Business Telecom Comments at 6; ACTA Comments at 11; Frontier Comments at 3-4; CFA/CU Comments at 7; see also supra note 29.

¹³⁶ Ohio Consumers' Counsel Comments at 4-5; Market Dynamics Comments at 17.

¹³⁷ AT&T Comments at 16-18; Sprint Comments at 6-7, 10-19; LDDS Comments at 9-11, 14; Cable & Wireless Comments at 7-8; US West Comments at 5; PacTel Comments at 6-7; Business Telecom Comments at 5-7; Eastern Tel Comments at 6-7; Ursus Comments at 4-5; MFS Comments at 8; WinStar Comments at 7-8; LCI Comments at 1-3; Casual Calling Coalition Comments at 8-11; CompTel Comments at 8; Frontier Comments at 5-7; CSE Comments at 6-7.

¹³⁸ AT&T Comments at 20-22; Casual Calling Coalition Comments at 16-17; LDDS Comments at 12-13; GSA Reply at 5 (supporting AT&T's interpretation, but noting that it would prefer if it were incorporated specifically into a Commission rule). Some parties add that nondominant interexchange carriers are unlikely to invoke the doctrine because they risk damage to their reputation and the loss of customers. See Cable & Wireless Comments at 7; CompTel Comments at 16-17 (acknowledging that the "filed-rate" doctrine would continue to apply in a permissive detariffing environment); LCI Comments at 8-9.

their competitors' rates, terms, and conditions;¹³⁹ and (4) casual calling options would still be feasible with permissive detariffing.¹⁴⁰

48. Several commenters, however, argue that permissive detariffing, that is, allowing nondominant interexchange carriers to file tariffs if they wish to do so, is not in the public interest.¹⁴¹ Several of these parties argue that permissive detariffing is contrary to the public interest, because it would allow nondominant interexchange carriers to "game" the system by filing tariffs when it serves their interest to do so, for example, to take advantage of the "filed-rate" doctrine or to engage in price signaling.¹⁴² Contrary to the interexchange carriers' assertions, these parties claim that the "filed-rate" doctrine would continue to exist if detariffing were implemented on a permissive basis.¹⁴³ TRA, which opposes any detariffing at all, argues that permissive detariffing would enable carriers to discriminate against resellers.¹⁴⁴

49. Some commenters suggest that the Commission limit forbearance from tariff filing requirements to individually-negotiated service arrangements and retain tariff filing requirements for mass market services offered to residential and small business customers, because tariffs allow carriers to establish a legal relationship with customers quickly and

¹³⁹ Frontier Comments at 6; CSE Comments at 5-6.

¹⁴⁰ AT&T Comments at 19-20; LDDS Comments at 4-6; Casual Calling Coalition Comments at 10-12; Market Dynamics Comments at 13; American Telegram Comments at 2 (supporting mandatory detariffing of rates, but not of terms and conditions).

¹⁴¹ These commenters include large telecommunications consumers that support complete detariffing and several state commissions that oppose detariffing entirely. See Tennessee Attorney General Comments at 3-5; Pennsylvania PUC Comments at 6-8; Pennsylvania Office of Consumer Advocate Comments at 3; Alabama PSC Comments at 3-5; Louisiana PSC Comments at 6-8; Ohio Consumers' Counsel Comments at 5-7; Bell South Comments at 17-18; Cato Institute Comments at 4; Ad Hoc Users Comments at 4-6; API Comments at 5-6; TRA Reply at 14-16; Television Networks Comments at 4-6; Market Dynamics Comments at 3-5 (favoring permissive detariffing of smaller carriers only).

¹⁴² TRA Reply at 14, 16; Television Networks Comments at 4-6; Ad Hoc Users Comments at 4-6; API Comments at 8-9; Florida PSC Comments at 3; Cato Institute Comments at 4; BellSouth Comments at 17-18.

¹⁴³ Ad Hoc Users Comments at 4-6; API Comments at 8-9; GSA Comments at 8-9; Television Networks Comments at 4-6; see also CompTel Comments at 16 (arguing that carriers could still invoke the filed rate doctrine with permissive detariffing, but that carriers would not do so in a competitive environment).

¹⁴⁴ TRA Comments at 10-13, 18.

inexpensively.¹⁴⁵ In addition, several parties urge the Commission to limit the scope of forbearance only to certain nondominant interexchange carriers,¹⁴⁶ or to certain types of information.¹⁴⁷

50. In addition, several commenters contend that it is premature to detariff now, in light of the dynamic changes occurring in the market, such as the reclassification of AT&T in October 1995, and the opening of all telecommunications markets to increased competition following enactment of the 1996 Act.¹⁴⁸ These commenters urge the Commission to defer any decision concerning forbearance from tariff filing requirements until it can evaluate the effect of these changes on the interstate, domestic, interexchange market.¹⁴⁹

51. Finally, several parties commented on how the Commission should treat the BOCs upon their entry into the interstate, domestic, interexchange services market in order to promote competition in this market. A number of BOCs and other parties argue that detariffing will only provide competitive benefits if we also detariff the BOCs once they enter the interstate, domestic, interexchange market.¹⁵⁰ They argue that failure to do so, would

¹⁴⁵ See Television Networks Comments at 3-5; API Reply at 14; MCI Comments at 3; Sprint Comments at 5; CFA/CU Comments at 2; GCI Comments at 2.

¹⁴⁶ For example, TRA and ACTA suggest that the Commission should forbear from applying Section 203 tariff filing requirements to those carriers with less than a certain percentage of the market and that are not affiliated with certain incumbent local exchange carriers, such as the BOCs. TRA Comments at 17-19; ACTA Comments at 14. But see AT&T Reply at 9-10 (arguing that the Commission should reject imposing different filing requirements for different carriers because the Commission has already determined that nondominant carriers cannot control prices).

¹⁴⁷ American Telegram Comments at 3-4; see also CompTel Comments at 18-19; Frontier Comments at 4-5; Cable & Wireless Comments at 7; Citizens Utilities Reply at 2-3.

¹⁴⁸ Tennessee Attorney General Comments at 3-4; Alabama PSC Comments at 5; Missouri PSC Comments at 3; Chrysler Minority Dealers Association Comments at 1; Association for the Study of Afro-American Life and History Comments at 1-2. These parties raised this issue in comments on all three of the statutory criteria. We address the issue under this criterion alone for administrative convenience, but our discussion of these issues applies to all such comments notwithstanding the criterion under which the commenters raised them.

¹⁴⁹ Tennessee Attorney General Comments at 3-4 (also expressing concern that the Commission may not have the authority to reverse a decision to forbear); Alabama PSC Comments at 5; Missouri PSC Comments at 3; Chrysler Minority Dealers Association Comments at 1; Association for the Study of Afro-American Life and History Comments at 1-2. But see Television Networks Comments at 3 n.2 (claiming that if circumstances were to change and tariffs become necessary, the Commission could always revisit its determination).

¹⁵⁰ NYNEX Comments at 2, 4-5; Ameritech Comments at 9; SBC Comments at 3-6; PacTel Comments at 3 n.4; BellSouth Comments at 18; Bell Atlantic Comments at 4; Corporate Managers Comments at 2-6; National Black Data Processors Association Comments at 2; National Association of Development Organizations Comments at 6-7.

place the BOCs, which they claim lack market power in the interstate, domestic, interexchange market, at a competitive disadvantage vis-a-vis existing interexchange carriers, which currently control the market, and would inhibit competition, thereby undermining Congress' objective in passing the 1996 Act.¹⁵¹ Others argue that, because the BOCs exercise market power in the exchange access market, the Commission should require the BOCs to file tariffs for interstate, domestic, interexchange services until the Commission has experience with the type and level of safeguards necessary to prevent cross-subsidization and other unlawful practices.¹⁵²

(3) Discussion

52. We adopt the tentative conclusion in the Notice that not allowing nondominant interexchange carriers to file tariffs for the provision of interstate, domestic, interexchange services is consistent with the public interest,¹⁵³ with the limited exception, as discussed below,¹⁵⁴ of AT&T's provision of 800 directory assistance and analog private line services. Section 10(b) specifically requires the Commission, in determining whether forbearance from enforcing a provision of the Communications Act or a regulation is in the public interest, to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. We find that a regime without nondominant interexchange carrier tariffs for interstate, domestic, interexchange services is the most pro-competitive, deregulatory system. Specifically, we find that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest, including eliminating the possible invocation of the filed rate doctrine by nondominant interexchange carriers, and establishing market conditions that more closely resemble an unregulated environment. Moreover, we find that permitting nondominant interexchange carriers to file tariffs on a voluntary basis would undermine several of these benefits, and therefore is not in the public interest.

53. The record in this proceeding supports our tentative conclusion that not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will promote competition in the market for such services. Even under

¹⁵¹ NYNEX Comments at 2, 4-5; Ameritech Comments at 9; SBC Comments at 3-6; BellSouth Comments at 18; Bell Atlantic Comments at 4-5; Corporate Managers Comments at 2-6; National Black Data Processors Association Comments at 2.

¹⁵² LDDS Comments at 15-17; CompTel Comments at 19; ACTA Comments at 13; TRA Comments at 17-19.

¹⁵³ Notice, 11 FCC Rcd at 7161.

¹⁵⁴ See infra para. 106.

existing streamlined tariff filing procedures,¹⁵⁵ requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes vigorous competition in the market for such services by: (1) removing incentives for competitive price discounting;¹⁵⁶ (2) reducing or taking away carriers' ability to make rapid, efficient responses to changes in demand and cost;¹⁵⁷ (3) imposing costs on carriers that attempt to make new offerings;¹⁵⁸ and (4) preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs.¹⁵⁹ Moreover, we believe that tacit coordination of prices for interstate, domestic, interexchange services, to the extent it exists, will be more difficult if we eliminate tariffs, because price and service information about such services provided by nondominant interexchange carriers would no longer be collected and available in one central location.

54. In addition, requiring tariffs for interstate, domestic, interexchange services offered by nondominant interexchange carriers impedes competition by preventing customers from seeking out or obtaining price and service arrangements tailored to their needs. As Ad Hoc Users and others note, carriers, in some cases, have refused to accommodate customers' requests for particular service terms on the ground that the requested terms are not contained in the carriers' tariffs, and that the Commission would reject any term or condition for service that differed from the carriers' general tariffs.¹⁶⁰ Eliminating tariff filings by nondominant interexchange carriers will prevent such carriers from refusing to negotiate with customers based on the Commission's tariff filing and review processes. As a result, carriers may become more responsive to customer demands, and offer a greater variety of price and service packages that meet their customers' needs.

¹⁵⁵ See supra note 29.

¹⁵⁶ BellSouth Comments at 17-18; API Comments at 5. This finding is consistent with the Commission's findings in the Competitive Carrier proceeding. Sixth Report and Order, 99 FCC 2d at 1030. The Commission recently reiterated this finding in the Regulatory Treatment of Mobile Services Order, 9 FCC Rcd at 1479.

¹⁵⁷ BellSouth Comments at 17. This finding is consistent with the Commission's findings in the Competitive Carrier proceeding. Sixth Report and Order, 99 FCC 2d at 1030. The Commission recently reiterated this finding in the Regulatory Treatment of Mobile Services Order, 9 FCC Rcd at 1479.

¹⁵⁸ BellSouth Comments at 17, Florida PSC Comments at 4; API Comments at 5. This finding is consistent with the Commission's findings in the Competitive Carrier proceeding. Sixth Report and Order, 99 FCC 2d at 1030. The Commission recently reiterated this finding in the Regulatory Treatment of Mobile Services Order, 9 FCC Rcd at 1479.

¹⁵⁹ BellSouth Comments at 20; Ad Hoc Users Comments at 11; API Reply at 6. This finding is consistent with the Commission's findings in the Competitive Carrier proceeding. Sixth Report and Order, 99 FCC 2d at 1031-32.

¹⁶⁰ Ad Hoc Users Comments at 11; BellSouth Comments at 20; API Reply at 6. The Commission justified its prior mandatory detariffing policy, in part, on the ground that carriers had engaged in such practices. See Sixth Report and Order, 99 FCC 2d at 1031-32.

55. Complete detariffing would also further the public interest by eliminating the ability of carriers to invoke the "filed-rate" doctrine. As noted above, courts have long held that, in a situation where a filed tariff rate, or other term or condition, differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to impose the tariffed rate, term or condition.¹⁶¹ While the Commission has held that unilateral changes that alter material terms and conditions of long-term service arrangements are reasonable only if justified by substantial cause,¹⁶² the filed rate doctrine provides carriers with the ability to alter or abrogate their contractual obligations in a manner that is not available in most commercial relationships. In addition, complete detariffing would further the public interest by preventing carriers from unilaterally limiting their liability for damages.¹⁶³ Accordingly, by permitting carriers unilaterally to change the terms of negotiated agreements, the filed rate doctrine may undermine consumers' legitimate business expectations. Absent filed tariffs, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment. Thus, eliminating the filed rate doctrine in this context would serve the public interest by preserving reasonable commercial expectations and protecting consumers.

56. Eliminating tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers will not, as some suggest,¹⁶⁴ reduce such carriers' incentive or ability to offer discounts or respond quickly to market changes by forcing them to give customers advance notice of all changes to their rates, terms, and conditions for service. Our experience over the past several years indicates that interexchange carriers' competitive offerings to residential and small business customers are typically optional calling

¹⁶¹ See supra note 122.

¹⁶² See RCA American Communications Inc. Revisions to Tariff F.C.C. Nos. 1 and 2, CC Docket No. 80-766, Memorandum Opinion and Order, 84 FCC 2d 353, 358-59 (1980); Memorandum Opinion and Order, 86 FCC 2d 1197, 1201-02 (1981), remanded, RCA American Communications, Inc. v. FCC, 684 F.2d 1033 (1982); Memorandum Opinion and Order, 94 FCC 2d 1338 (1983); RCA American Communications Inc. Revisions to Tariff F.C.C. Nos. 1 and 2, Transmittal No. 273, Memorandum Opinion and Order, 2 FCC Rcd 2363 (1987), pet. for rev. denied, sub nom. Showtime Networks, Inc. v. FCC, 932 F.2d 1 (D.C. Cir. 1991) (collectively RCA Americom Decisions); see also First Interexchange Competition Order, 6 FCC Rcd at 5898 n.155; February 1995 Interexchange Reconsideration Order, 10 FCC Rcd at 4574 n.51 (indicating that the substantial cause test would also apply to unilateral tariff modifications made by nondominant carriers).

¹⁶³ See, e.g., Western Union Tel. Co. v. Esteve Bros. & Co., 256 U.S. 566, 571 (1921); Western Union Tel. Co. v. Priester, 276 U.S. 252, 259 (1928). See Richman Bros. Records, Inc. v. U.S. Sprint Communications Co., Inc., 10 FCC Rcd 13639, 13641 (Com. Car. Bur. 1995).

¹⁶⁴ See AT&T Comments at 12, 16-18; MCI Comments at 10-12; Sprint Comments at 10-19; LDDS Comments at 9-11, 14; GCI Comments at 3; Cable & Wireless Comments at 6-7; TRA Comments at 14-15; Ameritech Comments at 1-8; PacTel Comments at 6-7; Business Telecom Comments at 5-6; Eastern Tel Comments at 3; Ursus Comments at 4-5; CFA/CU Comments at 5; MFS Comments at 5-7; WinStar Comments at 5; LCI Comments at 3; Casual Calling Coalition Comments at 8-9; CompTel Comments at 9-10; CSE Comments at 6-7. But see Ad Hoc Users Reply at 11-12; API Reply at 4-6.

plans in which consumers must affirmatively elect to participate. In order to induce customers to participate in such plans, carriers have widely advertised the terms and availability of these calling plans. Thus, detariffing of interstate, domestic, interexchange services is likely to have little, if any, impact on nondominant interexchange carriers' incentives or ability to engage in competitive price discounting. In addition, as a matter of contract law, nondominant interexchange carriers would not necessarily be required to provide notice before instituting changes that benefit, or do not adversely affect in a material way, customers (e.g., reducing rates).¹⁶⁵ Such carriers would, however, likely be required, as a matter of contract law, to give advance notice of those changes that adversely affect customers (e.g., rate increases). We conclude that it would not be unduly burdensome for nondominant interexchange carriers to provide customers advance notice of the latter changes through billing inserts or other measures. Such notice would provide greater protection to consumers and is more pro-competitive than allowing carriers to increase their rates by filing tariff changes with the Commission on one day's notice.

57. We recognize that detariffing may change significant aspects of the way in which nondominant interexchange carriers conduct their business. Contrary to the suggestion of some parties, however, tariffs are not the only feasible way for carriers to establish legal relationships with their customers, nor will nondominant interexchange carriers necessarily need to negotiate contracts for service with each, individual customer.¹⁶⁶ As some parties note, such carriers could, for example, issue short, standard contracts that contain their basic rates, terms and conditions for service.¹⁶⁷ Moreover, parties that oppose complete detariffing have not shown that the business of providing interstate, domestic, interexchange services offered by nondominant interexchange carriers should be subject to a regulatory regime that is not available to firms that compete in any other market in this country. We conclude that requiring nondominant interexchange carriers to withdraw their tariffs and conduct their business as other enterprises do will not impose undue burdens on such carriers, substantially increase their costs, or, as LDDS suggests, force such carriers to abandon segments of the

¹⁶⁵ For example, carriers could expressly reserve the right to make rate reductions or new discounts immediately available to existing customers. Carriers could also include in their service contracts provisions giving them flexibility to alter specific, incidental contract terms in a manner not adverse to the customer. See Restatement (Second) of Contracts § 34 (1981) (discussing the analogous practice of allowing one or both parties to a contract to select certain terms during the performance of the contract).

¹⁶⁶ See AT&T Comments at 12, 16-18; MCI Comments at 10-12; Sprint Comments at 10-19; LDDS Comments at 9-11, 14; GCI Comments at 3; Cable & Wireless Comments at 6-7; TRA Comments at 14-15; Ameritech Comments at 1-8; PacTel Comments at 6-7; Business Telecom Comments at 5-6; Eastern Tel Comments at 3; Ursus Comments at 4-5; CFA/CU Comments at 5; MFS Comments at 5-7; WinStar Comments at 5; LCI Comments at 3; Casual Calling Coalition Comments at 8-9; CompTel Comments at 9-10; CSE Comments at 6-7.

¹⁶⁷ See API Reply at 4-6; Ad Hoc Users Reply at 11-12 (arguing that transaction costs would not increase substantially because carriers could still cross-reference a standard publication); see also Sixth Report and Order, 99 FCC 2d at 1033.

market to the detriment of residential and small business customers.¹⁶⁸ Moreover, we reject ACTA's argument that detariffing will disproportionately burden small, nondominant interexchange carriers. While some of the increased administrative costs that carriers may incur initially as a result of the shift to a detariffed environment are likely to be fixed (such as the cost of developing short, standard contracts), many such costs will vary based on the area or number of customers served by such carriers (e.g., advertising expenditures, the cost of promotional mailings or billing inserts). Nonetheless, we find that, on balance, the pro-competitive effects of not allowing nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services outweigh any potential increase in transactional or administrative costs resulting from the shift to a detariffed environment.

58. We are also not persuaded that complete detariffing will make casual calling impossible. We believe nondominant interexchange carriers have options other than tariffs by which they can establish legal relationships with casual callers pursuant to which such callers would be obligated to pay for the telecommunications services they use.¹⁶⁹ By providing billing or payment information (e.g., credit card information or a billing number) and completing use of the telecommunications service, casual callers may be deemed to have accepted a legal obligation to pay for any such services rendered.¹⁷⁰ We do not believe that these options will prove unduly burdensome for carriers. In any event, we conclude that, on balance, the competitive benefits of complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange services outweigh any potential increased costs resulting from the shift to detariffing. We further believe that the nine-month transition period established by this Order,¹⁷¹ will afford carriers sufficient time to develop efficient mechanisms to provide casual calling services in the absence of tariffs.

¹⁶⁸ LDDS Comments at 10.

¹⁶⁹ For example, a carrier could seek recovery under an implied-in-fact contract theory if a customer has used the carrier's services, with knowledge of the carrier's charges, but has not executed a written contract. Under this theory, the customer's acceptance of the services rendered would evidence his agreement to the contract terms proposed by the carrier. See, e.g., Richard A. Lord, Williston on Contracts, ¶ 6:43 at 467-469 (4th ed. 1991) ("Indeed, any written contract, though signed by only one party, will bind the other, if he accepts the writing."); NLRB v. Local 825, Internat'l Union of Operating Engineers, 315 F.2d 695, 699 (3d Cir. 1963) ("Justice Holmes once said: 'Conduct which imports acceptance is acceptance or assent'"), quoting Hobbs v. Massasoit Whip Co., 158 Mass. 194, 33 N.E. 495 (1893); Seaview Ass'n of Fire Island, N.Y., Inc. v. Williams, 517 N.Y.S.2d 709 (1987) (concluding that the purchase of property with knowledge of conditions imposed by homeowners' association results in implied-in-fact contract to pay for services); Watts v. Columbia Artists Management, Inc., 591 N.Y.S.2d 234, 237 (App. Div. 1992) ("The mere fact that plaintiff was not a party to the written contract does not preclude the formation of a new contract, implied in fact. . . .").

¹⁷⁰ Similarly, a casual caller who uses a carrier's access code to obtain service from the carrier may be deemed to have accepted an outstanding offer from the carrier to provide casual calling service, and therefore be obligated to pay for any services rendered.

¹⁷¹ See infra section II.D.

59. We reject the suggestion that eliminating tariff filing requirements for nondominant interexchange carriers' interstate, domestic, interexchange services would impede competition for such services by reducing information available to consumers and small nondominant interexchange carriers.¹⁷² As discussed above, nondominant interexchange carriers are likely to make rate and service information, currently contained in tariffs, available to the public in a more user-friendly form in order to preserve their competitive position in the market, and as part of their contractual relationship with customers.¹⁷³ In addition, as we discuss below, we will require nondominant interexchange carriers to provide rate schedules for all of their interstate, domestic, interexchange services to consumers.¹⁷⁴

60. As noted, several parties, asserting that complete detariffing is not in the public interest, instead argue that permissive detariffing would be in the public interest. We reject their arguments for several reasons. Contrary to the assertions of AT&T and others, we believe that a permissive detariffing regime would not necessarily eliminate possible invocation of the "filed-rate" doctrine by nondominant interexchange carriers.¹⁷⁵ Section 203(c) provides that a carrier may not "charge, demand, collect, or receive a greater or less or different compensation . . . than the charges specified in the schedule then in effect."¹⁷⁶ Thus, it is possible that, once a carrier files a tariff with the Commission, even if it is on a permissive basis, Section 203(c) may require the carrier to provide service at the rates, and on the terms and conditions, set forth in the tariff until or unless the carrier files a superseding tariff cancelling, or changing the rates and terms of, the tariff. Because the filed rate doctrine is a legal doctrine developed by judicial precedent, it is not entirely clear how courts would apply the filed rate doctrine if nondominant interexchange carriers were permitted to file tariffs and the filed tariff rate differed from the rate set in a non-tariffed contract. We believe that only with a complete detariffing regime, under which the carrier-customer relationship would more closely resemble the legal relationship between service providers and customers

¹⁷² But see Tennessee Attorney General Comments at 3; Casual Calling Coalition Comments at 5-6, 8-9; National Black Data Processors Association Comments at 2; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; Fone Saver Comments at 1; ZWT Comments at 1-2; Ohio Consumers' Counsel Comments at 5; Market Dynamics Comments at 9-10; Business Telecom Comments at 6; Eastern Tel Comments at 4; Ursus Comments at 5; Excel Comments at 3; TRAC Comments at 3-4; GCI Comments at 3-4; NARUC Comments at 5; MFS Comments at 5, 7-8; WinStar Comments at 4-6; Pennsylvania Office of Consumer Advocate Comments at 2-3; Iowa Utilities Board Comments at 2.

¹⁷³ See supra para. 25.

¹⁷⁴ See infra paras. 84-86.

¹⁷⁵ See Ad Hoc Users Comments at 4-6; API Comments at 8-9; GSA Comments at 8-9; Television Networks Comments at 4-6; see also CompTel Comments at 16 (arguing that carriers could still invoke the filed rate doctrine with permissive detariffing, but that carriers would not do so in a competitive environment).

¹⁷⁶ 47 U.S.C. § 203(c).

in an unregulated environment, can we definitively eliminate these possible anticompetitive practices and protect consumers.

61. Another consideration that precludes us from finding that permissive detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers is in the public interest is that, unlike complete detariffing, permissive detariffing would not eliminate the collection and availability of rate information in one centralized location. Although we recognize that nondominant interexchange carriers under a complete detariffing regime would still be able to obtain information concerning their competitors' rates and service offerings, we believe that tacit price coordination, to the extent it exists, will be more difficult. In contrast, allowing nondominant interexchange carriers to file tariffs on a voluntary basis would create the risk that carriers would file tariffs merely to send price signals and thus manipulate prices.¹⁷⁷ In this respect, we are not persuaded by Frontier and CSE who argue that permissive detariffing would eliminate any risk of coordinated pricing because carriers could not be certain of their competitors' rates, terms, and conditions for service.¹⁷⁸ Carriers could use tariffs to engage in price signalling, because any nondominant carrier that opted to file a tariff would be bound by its terms until or unless the carrier cancelled or modified the tariff through a new tariff filing, and thus competing carriers would be certain of such carrier's rates, terms and conditions for service while its tariff is in effect.

62. In addition, we note that permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services imposes administrative costs on the Commission, which must maintain and organize tariff filings for public inspection.¹⁷⁹ In light of our conclusion that market forces, the complaint process, and our ability to reimpose tariff filing requirements are adequate to protect consumers and ensure that nondominant interexchange carriers' rates, terms and conditions for interstate, domestic, interexchange services are just, reasonable and not unreasonably discriminatory, we believe that the public interest would be better served by the Commission devoting these resources to its enforcement duties.

63. With two limited exceptions described below,¹⁸⁰ we also do not believe that there is a sound basis for concluding that forbearance is in the public interest only with respect to certain interstate, domestic, interexchange services, such as individually negotiated

¹⁷⁷ Florida PSC Comments at 3; Cato Institute Comments at 4; BellSouth Comments at 17-18; see also Regulatory Treatment of Mobile Services Order, 9 FCC Rcd at 1479-80.

¹⁷⁸ See Frontier Comments at 6; CSE Comments at 5-6.

¹⁷⁹ See Corporate Managers Comments at 5-6; GSA Comments at 9-10; see also Sixth Report and Order, 99 FCC 2d at 1030-31. But see Casual Calling Coalition Comments at 17 n.19 (arguing that conservation of Commission resources is not an express statutory criterion for forbearance).

¹⁸⁰ See infra para. 106.

service arrangements offered by nondominant interexchange carriers. We find that the competitive benefits of not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services, discussed above,¹⁸¹ apply equally to all segments of the interstate, domestic, interexchange services market. Moreover, as discussed above, we reject the argument that detariffing mass market services offered to residential and small business customers will lead to substantially higher transactions costs. Similarly, we are not persuaded that the public interest benefits differ depending on the type of tariffed information that is at issue. The public interest benefit of removing carriers' ability to invoke the "filed-rate" doctrine applies equally with respect to terms and conditions as to rates.¹⁸² Moreover, permitting or requiring large nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services would not eliminate the risk of tacit price coordination among such carriers, and would raise the possibility that such carriers' tariffed rates would become a price umbrella.¹⁸³ Finally, we agree with AT&T that there is no basis to differentiate among nondominant interexchange carriers, because all such carriers are unable to exercise market power in the interstate, domestic, interexchange market.¹⁸⁴

64. Nor do we believe that we should delay our decision to detariff the interstate, domestic, interexchange services of nondominant interexchange carriers. Because we find the statutory criteria for forbearance are met at this time for all interstate, domestic, interexchange services offered by nondominant interexchange carriers, we are required by the 1996 Act to forbear from applying Section 203 tariff filing requirements to these services. Should circumstances change such that the statutory forbearance criteria are no longer met, we have the authority to revisit our determination here, and to reimpose Section 203 tariff filing requirements.

65. Finally, with respect to the regulatory treatment of BOC interexchange affiliates upon their entry into the interstate, domestic, interexchange market, we find no basis to exclude such carriers from the purview of this Order if they are classified as nondominant in their provision of interstate, domestic, interexchange services. We note that we are addressing the issue of whether incumbent local exchange carriers, including the BOCs, should be classified as dominant or nondominant in their provision of interstate, domestic, interexchange services in a separate ongoing proceeding.¹⁸⁵

¹⁸¹ See supra paras. 53, 54.

¹⁸² See supra para. 55.

¹⁸³ F.M. Scherer and David Ross, Industrial Market Structure and Economic Performance 248-61 (3d ed. 1990).

¹⁸⁴ AT&T Reply at 10.

¹⁸⁵ See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, Notice of Proposed Rulemaking, FCC 96-308 (rel. July 18,

66. For the reasons explained herein, we find that complete detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers is in the public interest, and that permissive detariffing of such services is not in the public interest.

3. Authority to Eliminate Tariff Filings

a. Background

67. In the Notice, the Commission sought comment on whether it has the authority under Section 10 of the Communications Act not to permit carriers to file tariffs.¹⁸⁶

b. Comments

68. Several interexchange carriers and others argue that the plain language of Section 10 authorizes the Commission only to refrain from requiring tariffs, but not to prohibit carriers from voluntarily complying with Section 203.¹⁸⁷ AT&T contends that the Commission has used the term "forbearance" to apply only to permissive detariffing,¹⁸⁸ and used the terms "cancellation" of all filed tariffs and "elimination" of future filings in adopting complete detariffing in the Competitive Carrier proceeding.¹⁸⁹ AT&T adds that Congress used different terms in other provisions of the Communications Act to authorize the Commission to adopt complete detariffing.¹⁹⁰ Specifically, AT&T argues that Congress gave the Commission authority to specify certain provisions of Title II of the Communications Act as "inapplicable" to CMRS providers.¹⁹¹ AT&T claims that by failing to use this term in Section 10, and instead using such permissive terms as "forbear from applying" or "enforcing," Congress did not intend to give the Commission authority to adopt complete detariffing.¹⁹²

1996).

¹⁸⁶ Notice, 11 FCC Rcd at 7162-63.

¹⁸⁷ AT&T Comments at 10; Sprint Comments at 3 n.1; MCI Reply at 4-9; LDDS Comments at 6-9; MFS Comments at 3-5; WinStar Comments at 3-4; GTE Comments at 5; CompTel Comments at 19-21; Eastern Tel Comments at 2-3.

¹⁸⁸ AT&T Comments at 11.

¹⁸⁹ Id.

¹⁹⁰ Id.; see also GTE Comments at 6; MFS Comments at 4-5; CompTel Comments at 21 n.27.

¹⁹¹ 47 U.S.C. § 332(c)(1)(A).

¹⁹² AT&T Comments at 11-12; see also MFS Comments at 4.

69. Other parties, however, argue that the 1996 Act gives the Commission legal authority to prohibit carriers from filing tariffs.¹⁹³ Ad Hoc Users argues that the Commission has used the term "forbearance" to refer to both mandatory and permissive detariffing.¹⁹⁴ Ad Hoc Users further argues that federal agencies and the courts have construed similar statutory provisions as authorizing federal agencies to adopt mandatory deregulation.¹⁹⁵ Specifically, Ad Hoc Users contends that: (1) the Commission adopted mandatory detariffing for CMRS based on Section 332(c)(1)(A) of the Communications Act, which gave the Commission authority to specify certain provisions of Title II of the Communications Act as "inapplicable" to CMRS providers; and (2) the Civil Aeronautics Board (CAB) mandatorily deregulated the airline industry based on an amendment to the Federal Aviation Act that gave the CAB authority to "exempt" certain domestic air carriers from the requirements of the Federal Aviation Act if it found that such exemption was "consistent with the public interest."¹⁹⁶ Ad Hoc Users argues that these statutory grants of authority are substantially similar to Section 10, and that AT&T's argument (*i.e.*, that Section 10 only allows permissive deregulation) could be made about each of those statutes.¹⁹⁷

c. Discussion

70. We conclude that the Commission has authority under Section 10 to refuse to permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. We reject the argument advanced by AT&T and others that by using the term "forbear," Congress intended to authorize the Commission merely to "refrain from enforcing" its regulations or provisions of the Communications Act where the statutory forbearance criteria are met, and not to authorize the Commission to refuse to permit nondominant carriers to comply with such regulations or provisions voluntarily.¹⁹⁸ We conclude that the plain meaning of the statute does not support their argument, and that federal agencies and the courts have construed similar statutory provisions as authorizing agencies to bar regulated entities from filing rate schedules and other tariff equivalents.

¹⁹³ Ad Hoc Users Reply at 2-5; API Reply at 9-11.

¹⁹⁴ Ad Hoc Users Reply at 3.

¹⁹⁵ *Id.* at 4-5.

¹⁹⁶ Ad Hoc Users Reply at 4-5; *see also* Letter from C. Douglas Jarrett, Counsel to API, to William Caton, Acting Secretary, Federal Communications Commission (October 11, 1996) (API October 11 *Ex Parte*).

¹⁹⁷ Ad Hoc Users Reply at 4-5.

¹⁹⁸ *See* AT&T Comments at 10; Sprint Comments at 3 n.1; MCI Reply at 7; LDDS Comments at 6-9; MFS Comments at 3-4; WinStar Comments at 3-4; GTE Comments at 5; CompTel Comments at 20; Eastern Tel Comments at 2-3.

71. As noted, AT&T and others argue that the dictionary definition of the term "forbear" authorizes the Commission to detariff only on a permissive basis.¹⁹⁹ We agree with Ad Hoc Users that, in this context, such reliance solely on dictionary definitions is inappropriate, and can be misleading, where the historical usage of a term endows that term with a distinct meaning.²⁰⁰ The Commission has consistently used the term "forbear," or a variation thereof, to refer to mandatory, as well as to permissive, detariffing. For example, in the Sixth Report and Order, the Commission stated that its mandatory detariffing proposal, if adopted, "would result in the cancellation of all forborne carrier tariffs currently on file with the Commission and would eliminate future federal tariff filings by carriers treated by forbearance."²⁰¹ Similarly, in Regulatory Treatment of Mobile Services, the Commission stated that it would "forbear from requiring or permitting tariffs of interstate service offered directly by CMRS providers to their customers," based on the Commission's authority to specify any provision of Title II as "inapplicable" to any CMRS provider.²⁰²

72. The courts and Congress have also used the term "forbear" to apply to circumstances involving this agency's authority to refuse to permit carriers to file tariffs. In MCI Telecommunications Corp. v. FCC, the U.S. Court of Appeals for the D.C. Circuit used the term "forbearance" to refer to our previous mandatory detariffing policy, noting that "[t]he Sixth Report . . . changed the permissive forbearance arrangement to a mandatory one."²⁰³ In addition, in describing the Commission's previous tariff forbearance policy, the Senate Commerce, Science, and Transportation Committee applied the term "forbearance" to the

¹⁹⁹ See AT&T Comments at 10; Sprint Comments at 3 n.1; MCI Reply at 7; LDDS Comments at 8; WinStar Comments at 3; MFS Comments at 3-4 (citing, among others, definitions from Black's Law Dictionary ("forbear" defined as "refraining from action"); and Webster's Third International Dictionary ("forbear" defined as "to refrain from, abstain")).

²⁰⁰ See Ad Hoc Users Reply at 3-5.

²⁰¹ Sixth Report and Order, 99 FCC 2d at 1021 (emphasis added). See also Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Notice of Proposed Rulemaking, 5 FCC Rcd 2627, 2652 n.41 (1990) ("Subsequently, in the Sixth Report, the Commission required nondominant carriers subject to forbearance to provide their service offerings on a non-tariffed basis."); Decreased Regulation of Certain Basic Telecommunications Services, CC Docket No. 86-421, 2 FCC Rcd 645, 654 n.17 (1986) ("The Sixth Report, which required those nondominant carriers subject to forbearance to provide their services on a non-tariffed basis, was reversed and remanded by the U.S. Court of Appeals for the D.C. Circuit.").

²⁰² Regulatory Treatment of Mobile Services Order, 9 FCC Rcd at 1480.

²⁰³ MCI Telecommunications Corp. v. FCC, 765 F.2d 1186, 1189 (D.C. Cir. 1985). In determining that the Commission lacked statutory authority at that time to adopt mandatory detariffing for interstate, interexchange carriers, the court noted, that in the Record Carrier Competition Act, Congress had expressly authorized the Commission to "forbear from exercising its authority under [Title II of the Communications Act]." *Id.* at 1195 (quoting the Record Carrier Competition Act of 1981, Pub. L. No. 97-130, § 2, 95 Stat. 1687). But see AT&T Co. v. FCC, 978 F.2d 727, 729 (D.C. Cir. 1992), *cert. denied*, AT&T Co. v. FCC, 509 U.S. 913 (1993) (stating that "[t]he Commission, however, went beyond mere forbearance in 1985 in its Sixth Report and Order . . .").

entire Competitive Carrier proceeding, encompassing both mandatory and permissive detariffing.²⁰⁴

73. It was against this background that Congress adopted Section 10(a). Accordingly, we concur with Ad Hoc Users that the term "forbear" must be construed within its historical and regulatory context, and not in a vacuum.

74. We further note that in construing a similar statutory provision, the U.S. Court of Appeals for the D.C. Circuit rejected a virtually identical argument that Congress had only provided the CAB authority to deregulate the airline industry on a permissive basis.²⁰⁵ In an amendment to the Federal Aviation Act, Congress granted the CAB authority to "exempt" domestic air carriers from statutory requirements of the Federal Aviation Act.²⁰⁶ The CAB used this authority to prohibit certain air carriers from filing tariffs and certain intercarrier agreements.²⁰⁷ In National Small Shipments Traffic Conference, Inc., petitioners argued that the CAB's "authority to exempt airlines from certain requirements cannot be used to prohibit airlines from filing [intercarrier] agreements . . . if they choose to do so."²⁰⁸ The court rejected this argument, noting that the CAB's exemption authority was "broad" and that its refusal to permit airlines to file intercarrier agreements was consistent with Congress' deregulatory purpose.²⁰⁹

75. Moreover, the action we take here is consistent with the Commission's order adopting complete detariffing for domestic CMRS providers.²¹⁰ In Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Congress granted the Commission authority to declare "inapplicable to [any commercial mobile] service or person" any provision

²⁰⁴ See Telephone Operator Consumer Services Improvement Act of 1990, S. Rep. No. 439, 101st Cong., 2d Sess. 3 n.10 (1990) reprinted in 1990 U.S.C.C.A.N. 1577, 1579 (stating that "[t]he FCC has chosen to 'forbear' from regulating the rates of 'non-dominant' carriers because they do not possess market power and thus have little ability to charge unjust or unreasonable rates in violation of the Communications Act of 1934," and citing, *inter alia*, the Sixth Report and Order).

²⁰⁵ National Small Shipments Traffic Conference, Inc. v. CAB, 618 F.2d 819 (D.C. Cir. 1980).

²⁰⁶ *Id.* at 822 n.2, 823, 827 (citing 49 U.S.C. §§ 1386(b), 1388(c)).

²⁰⁷ *Id.* at 825-26.

²⁰⁸ *Id.* at 835.

²⁰⁹ *Id.* ("The [CAB's] attempt to further reduce the amount of regulation through use of its broad exemption powers is quite consistent with Congress' purpose in enacting the amendments. Indeed, it promotes Congress' purposes in making the changes.").

²¹⁰ See generally Regulatory Treatment of Mobile Services Order, 9 FCC Rcd 1411.

of Title II, subject to certain limitations.²¹¹ This grant of authority, while not identical, is similar to the Commission's authority under Section 10. In response to this grant of authority under Section 6002(b), the Commission determined that it would "forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers."²¹²

76. In addition, we conclude that Section 203, which was "enacted to control monopoly abuse" by the carriers,²¹³ does not grant to carriers a statutory right to file tariffs. As noted in the 1996 Act's legislative history, "given that the purpose of this legislation is to shift monopoly markets to competition as quickly as possible, the Committee anticipates this forbearance authority will be a useful tool in ending unnecessary regulation."²¹⁴ Thus, it seems inconceivable that Congress intended Section 10 to be interpreted in a manner that allows continued compliance with provisions or regulations that the Commission has determined were no longer necessary in certain contexts.

²¹¹ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392-93 (1993). Similar to the forbearance provision of the 1996 Act, Section 332 of the Communications Act, as amended by OBRA, authorizes the Commission to specify by regulation any provision of Title II, subject to certain limitations, as "inapplicable to [any commercial mobile] service or person" engaged in the provision of commercial mobile service, otherwise treated as a common carrier. 47 U.S.C. § 332(c)(1)(A). Section 332(c)(1)(A) requires that before forbearing from applying any section of Title II the Commission must find that each of the following conditions applies:

- (1) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such provision is not necessary for the protection of consumers; and
- (3) specifying such provision is consistent with the public interest.

Id. In evaluating the public interest, Section 332(c)(1)(C) requires the Commission to consider:

whether the proposed regulation . . . will promote competitive market conditions, including the extent to which such regulation . . . will enhance competition among providers of commercial mobile service. If the Commission determines that such regulation . . . will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation . . . is in the public interest.

47 U.S.C. § 332(c)(1)(C).

²¹² Regulatory Treatment of Mobile Services Order, 9 FCC Rcd at 1480.

²¹³ Sixth Report and Order, 99 FCC 2d at 1028.

²¹⁴ H.R. Rep. No. 204, 104th Cong., 1st Sess. 89; see also Joint Explanatory Statement at 1.

4. Summary of Findings and Conclusions

77. We therefore conclude that tariffs are not necessary to ensure that the rates, practices, classifications, and regulations of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. In addition, we conclude that tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers. Moreover, we find that complete detariffing of interstate, domestic, interexchange services provided by nondominant interexchange carriers is in the public interest, and that permissive detariffing of such services is not in the public interest. Accordingly, pursuant to the requirements of Section 10, we conclude that we must forbear from applying Section 203 tariff filing requirements to the interstate, domestic, interexchange services offered by nondominant interexchange carriers and not permit nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services. We also conclude that the Commission has authority under Section 10 to refuse to permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. We therefore order that nondominant interexchange carriers cancel all tariffs for such services currently on file with the Commission, subject to the procedural details specified below, and prohibit nondominant interexchange carriers from filing tariffs for such services in the future.²¹⁵

C. Maintenance and Disclosure of Price and Service Information; Certifications

1. Background

78. In the Notice, the Commission tentatively concluded that, if it were to adopt a complete detariffing policy, nondominant interexchange carriers would be required to maintain at their premises price and service information regarding all of their interstate, domestic, interexchange service offerings, which they could submit to the Commission upon request.²¹⁶ In addition, the Commission tentatively concluded that it would require nondominant providers of interexchange telecommunications services to file certifications stating that they are in compliance with the geographic rate averaging and rate integration requirements of Section 254(g) in order to ensure compliance with those requirements.²¹⁷ The Commission

²¹⁵ See infra section II.D.

²¹⁶ Notice, 11 FCC Rcd at 7163. In adopting its prior mandatory detariffing policy, the Commission required affected carriers to maintain such information at whatever company location they desired. Sixth Report and Order, 99 FCC 2d at 1034.

²¹⁷ Notice, 11 FCC Rcd at 7178, 7182. New Section 254(g), adopted as part of the 1996 Act, requires that a provider of interexchange telecommunications services charge its subscribers in rural and high cost areas rates that do not exceed the rates that the carrier charges subscribers in urban areas (i.e., that rates be geographically averaged). Section 254(g) also requires that providers of interexchange telecommunications services charge subscribers in each State rates that do not exceed the rates it charges subscribers in another State (i.e., that rates be integrated). 47 U.S.C. § 254(g); see also Geographic Rate Averaging Order, 11 FCC Rcd 9564

further tentatively concluded that it would rely on the complaint process under Section 208 to bring violations of Section 254(g) to its attention.²¹⁸

2. Comments

79. Several commenters recommend that, if the Commission adopts detariffing, it should require nondominant interexchange carriers to make their rates available to the public in some other fashion, such as by posting pricing information on-line, submitting current rate information to the Commission, or making such information available to any member of the public upon request.²¹⁹ These commenters argue that the public needs such information to determine whether a carrier is complying with the geographic rate averaging and rate integration requirements of Section 254(g) as well as with the nondiscrimination requirements of Section 202.²²⁰ Several of these commenters further argue that consumers, especially residential and small business customers, need information on rates, terms and conditions to compare carriers' service offerings.²²¹ Several small businesses that analyze tariff information for business and residential customers argue that they need such information to conduct their businesses.²²²

80. Other commenters, however, oppose any record-keeping requirement. They argue that imposing such a requirement would eliminate any cost savings resulting from

(implementing Section 254(g)).

²¹⁸ Notice, 11 FCC Rcd at 7178, 7182.

²¹⁹ Iowa Utilities Board Comments at 2-4; Florida PSC Comments at 5; GSA Comments at 6-7, 11-16; Pennsylvania Office of Consumer Advocate Comments at 1-6; Missouri Office of Public Counsel Comments at 4; TRA Phase 1 Comments at 6-13, 17-18; GTE Phase 1 Comments at 17-19; USTA Phase 1 Comments at 4-6; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; Rural Telephone Coalition Comments at 3-13; NARUC Comments at 4-5; ZWT Comments at 1; XIOX Comments at 1-2; MOSCOM Comments at 1-2; Telecommunications Management Information Systems Coalition Comments at 6-11; TRAC Comments at 6-8.

²²⁰ Iowa Utilities Board Comments at 2-4; Florida PSC Comments at 5; GSA Comments at 6-7, 11-16; Pennsylvania Office of Consumer Advocate Comments at 1-6; TRA Phase 1 Comments at 6-13, 17-18; GTE Phase 1 Comments at 17-19; USTA Phase 1 Comments at 4-6; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; Rural Telephone Coalition Comments at 3-13; NARUC Comments at 4-5; ZWT Comments at 1; XIOX Comments at 1-2; MOSCOM Comments at 1-2; Telecommunications Management Information Systems Coalition Comments at 6-11; Alaska Reply at 9-11; Hawaii Reply at 24.

²²¹ TRA Comments at 17; GCI Comments at 3; NARUC Comments at 5; Eastern Tel Comments at 4; Ursus Comments at 5; Casual Calling Coalition Comments at 8; TRAC Comments at 5-6; CFA/CU Comments at 2-3; Pennsylvania Office of Consumer Advocate Comments at 3; WinStar Comments at 4-6; National Association of Development Organizations Comments at 6; Market Dynamics Comments at 9-10.

²²² XIOS Comments at 1-2; MOSCOM Comments at 1-2; Network Analysis Center Comments at 1-2; Audits Unlimited Comments at 1-2; Scheraga and Associates Comments at 1; Telecommunications Management Information Systems Coalition Comments at 5-6; Telecommunications Information Services Comments at 1-2.

detariffing.²²³ Several parties further insist that carriers will make rate and service information available to consumers through other means.²²⁴

81. AT&T argues that, to the extent the Commission seeks to justify its decision to detariff on the ground that complete detariffing would eliminate the "filed-rate" doctrine, a requirement that carriers make rate information available on-line or through a clearinghouse would undermine this objective.²²⁵ AT&T insists that the "filed-rate" doctrine would continue to apply if such a requirement is imposed, because the doctrine is based on the imposition of a filing requirement and not on the manner or place of filing.²²⁶

82. Several interexchange carriers and BOCs contend that the Commission's proposed certification requirement and the complaint process are appropriate mechanisms to enforce the requirements of Section 254(g).²²⁷ Others, however, argue that the Commission should not require certifications, but should rely instead on the complaint process and its ability to examine rates upon request.²²⁸ These parties argue that certifications do little to advance the Commission's enforcement objectives, and that the complaint process and the Commission's ability to examine rates upon request are the only effective means to ascertain whether carriers are in compliance with their statutory obligations.²²⁹

3. Discussion

83. We adopt the tentative conclusion in the Notice that nondominant providers of interstate, domestic, interexchange telecommunications services should be required to file annual certifications signed by an officer of the company under oath that they are in compliance with their statutory geographic rate averaging and rate integration obligations. We believe that annual certifications will emphasize the importance that we place on the rate averaging and rate integration requirements of the 1996 Act and put carriers on notice that they may be subject to civil and criminal penalties for violations of these requirements, especially willful violations.

²²³ CompTel Comments at 15; MCI Comments at 13; Market Dynamics Comments at 19.

²²⁴ BellSouth Comments at 20; Ad Hoc Users Reply at 12-13.

²²⁵ AT&T Reply at 5.

²²⁶ Id. at n.11.

²²⁷ BellSouth Phase 1 Comments at 3-5; LDDS Phase 1 Comments at 14-15; Ameritech Phase 1 Comments at 15; Frontier Phase 1 Comments at 8 n.27; MCI Phase 1 Comments at 32-33; Commonwealth of Northern Mariana Islands Comments at 12-13.

²²⁸ Cable & Wireless Phase 1 Comments at 7; CompTel Phase 1 Comments at 9.

²²⁹ Cable & Wireless Phase 1 Comments at 7; CompTel Phase 1 Comments at 9.

84. While we believe that carrier certifications will be an important mechanism for enforcing the 1996 Act's geographic rate averaging and rate integration requirements, we are persuaded by the arguments of many parties, including numerous state regulatory commissions and consumer groups, that publicly available information is necessary to ensure that consumers can bring complaints, if necessary, to enforce those requirements.²³⁰ As noted above, we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services in ways that violate Sections 201 and 202 of the Communications Act, and that such carriers will generally provide rate and service information to consumers to preserve or improve their competitive position in the market.²³¹ We recognize, however, that in competitive markets carriers would not necessarily maintain geographically averaged and integrated rates for interstate, domestic, interexchange services as required by Section 254(g).²³² Because the public should have the ability to bring violations of the geographic rate averaging and rate integration requirements of the 1996 Act to our attention, we believe it is appropriate to require carriers to make available to the public the information that is necessary for the public to determine whether a carrier is adhering to the geographic rate averaging and rate integration requirements of Section 254(g). Accordingly, we will require nondominant interexchange carriers to make information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in an easy to understand format and in a timely manner.²³³ We note that, by adopting this requirement, we do not intend to require carriers to disclose more information than is currently provided in tariffs, in particular in contract tariffs.

85. The requirement that nondominant interexchange carriers make available to the public information concerning the current rates, terms and conditions for all of their interstate, domestic, interexchange services also will promote the public interest by making it easier for

²³⁰ See Iowa Utilities Board Comments at 2-4; Florida PSC Comments at 5; GSA Comments at 6-7, 11-16; Pennsylvania Office of Consumer Advocate Phase 1 Comments at 1-6; TRA Phase 1 Comments at 6-13, 17-18; GTE Phase 1 Comments at 17-19; USTA Phase 1 Comments at 4-6; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; Rural Telephone Coalition Comments at 3-13; NARUC Comments at 4-5; ZWT Comments at 1; XIOX Comments at 1-2; MOSCOM Comments at 1-2; Telecommunications Management Information Systems Coalition Comments at 6-11; Alaska Reply at 9-11; Hawaii Reply at 24.

²³¹ See *supra* para. 25.

²³² Carriers in a competitive market might, for example, seek to deaverage their rates to respond to competition. See, e.g., Geographic Rate Averaging Order, 11 FCC Rcd at 9583 (declining to create a competitive exception to geographing).

²³³ A nondominant interexchange carrier must make available to any member of the public such information about all of that carrier's interstate, domestic, interexchange services.

consumers, including resellers, to compare carriers' service offerings.²³⁴ While nondominant interexchange carriers will generally provide rate and service information to consumers in order to attract and retain customers, some consumers may find it difficult to determine the particular service plans that are most appropriate, and least costly, for them, based on their calling patterns, because of the wide array of calling plans offered by the scores of carriers. Businesses and consumer organizations that analyze and compare the rates and services of interexchange carriers perform a valuable function in assisting consumers to judge the specific carriers' rates and service plans that are best suited to their individual needs. The foregoing requirement will ensure that such businesses, many of which are small businesses, continue to have access to the information they need to provide their services.²³⁵

86. In order to minimize the burden on nondominant interexchange carriers of complying with this requirement, we will not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location. We reject the suggestion that we should require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line. We find that mandating such a requirement would be unduly burdensome at this time. Rather, we will require only that a carrier make such information available to the public in at least one location during regular business hours. We will also require carriers to inform the public that this information is available when responding to consumer inquiries or complaints, and to specify the manner in which the consumer may obtain the information.²³⁶ In addition, because we are simply requiring carriers to make information available to the public, we need not address AT&T's argument that requiring nondominant interexchange carriers to make price and service information available on-line or at a central clearinghouse is a filing requirement within the meaning of Section 203.

87. Finally, we adopt the tentative conclusion in the Notice that we should require nondominant interexchange carriers to maintain price and service information regarding all of their interstate, domestic, interexchange service offerings, that they can submit to the

²³⁴ See TRA Comments at 17; GCI Comments at 3; NARUC Phase 1 Comments at 5; Eastern Tel Comments at 4; Ursus Comments at 5; Casual Calling Coalition Comments at 8; TRAC Comments at 5-6; CFA/CU Comments at 2-3; Pennsylvania Office of Consumer Advocate Comments at 3; WinStar Comments at 4-6; National Association of Development Organizations Comments at 6; Market Dynamics Comments at 9-10.

²³⁵ See XIOX Comments at 1-2; MOSCOM Comments at 1-2; Network Analysis Center Comments at 1-2; Audits Unlimited Comments at 1-2; Scheraga and Associates Comments at 1; Telecommunications Management Information Systems Coalition Comments at 5-6; Telecommunications Information Services Comments at 1-2.

²³⁶ Although we do not require carriers to make such information available to the public at more than one location, we encourage carriers to consider ways to make such information more widely available, for example, posting such information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone.

Commission upon request.²³⁷ We believe it is appropriate that this information should include the information that carriers provide to the public as required above, as well as documents supporting the rates, terms, and conditions of the carriers' interstate, domestic, interexchange offerings.²³⁸ We also find that it is appropriate to require nondominant interexchange carriers to retain the foregoing records for a period of at least two years and six months following the date the carrier ceases to provide services on such rates, terms and conditions, in order to afford the Commission sufficient time to notify a carrier of the filing of a complaint, which generally must be commenced within two years from the time the cause of action accrues.²³⁹ We will also require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. We will further require that nondominant interexchange carriers maintain the foregoing records in a manner that allows carriers to produce such records within ten business days of receipt of a Commission request. We conclude that the availability of such records will enable the Commission to meet its statutory duty of ensuring that such carriers' rates, terms, and conditions for service are just, reasonable, and not unreasonably discriminatory, and that these carriers comply with the geographic rate averaging and rate integration requirements of the 1996 Act. In addition, maintenance of such records will enable the Commission to investigate and resolve complaints.

D. Transition

1. Comments

88. Several commenters suggest that if the Commission were to adopt the complete detariffing proposal, it should also implement an appropriate transition period to afford nondominant interexchange carriers time to adapt their operations to a detariffed regime.²⁴⁰ Ad Hoc Users and API suggest that we adopt a six-month transition period.²⁴¹ Eastern Tel, AT&T, and LDDS recommend a period of at least one year, and LCI suggests a phase-in period of 18-24 months.²⁴² In addition, AT&T urges the Commission to "make clear that the

²³⁷ Notice, 11 FCC Rcd at 7163.

²³⁸ We note that we will not require carriers to make such supporting documentation available to the public.

²³⁹ 47 U.S.C. § 415. We note that, in the event a complaint is filed against a carrier, we will require the carrier to retain documents relating to the complaint until the complaint is resolved.

²⁴⁰ Ad Hoc Users Comments at 13-14; API Reply at 13; Eastern Tel Comments at 5.

²⁴¹ Ad Hoc Users Comments at 13-14; API Reply at 13.

²⁴² Eastern Tel Comments at 5; LDDS Comments at 14-15; LCI Comments at 4; Letter from R. Gerard Salemme, Vice President - Government Affairs, AT&T, to Regina M. Keeney, Chief, Common Carrier Bureau, Federal Communications Commission, October 17, 1996 at 4 (AT&T October 17 Ex Parte); Letter from R.

terms of individual carrier/customer deals currently on file at the Commission stay on file and remain unchanged by a decision to prohibit the filing of tariffs."²⁴³ Ad Hoc Users and API, on the other hand, urge the Commission to prevent carriers from filing tariffs that supersede existing contracts during the transition period.²⁴⁴ API further recommends that during the transition period, carriers should not be permitted to require that the terms of existing pricing arrangements be extended as a condition for negotiating contracts to replace existing tariffs.²⁴⁵ Finally, Eastern Tel requests the Commission to work with industry to develop a standard contract for telecommunications services, similar to the form contracts used in the real estate industry, that address such issues as the collection procedures that can be utilized.²⁴⁶

2. Discussion

89. We agree that we should allow nondominant interexchange carriers an appropriate transition period to adjust to detariffing. We conclude that a nine-month period is sufficient to provide for an orderly transition. We believe that this transition period will afford carriers sufficient time to adjust to detariffing. We do not believe that a more extended period is needed for nondominant interexchange carriers to adjust their operations. Nondominant interexchange carriers are not required to negotiate a new contract with each customer. Nondominant interexchange carriers may utilize various methods to establish legal relationships with customers in the absence of tariffs, including, for example, the use of short standard agreements. We therefore order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months of the effective date of this Order and not to file any such tariffs thereafter.²⁴⁷

90. Nondominant interexchange carriers may cancel their tariffs for interstate, domestic, interexchange services at any time during the nine-month period. Pending such

Gerard Salemmé, Vice President - Government Affairs, AT&T, to Regina M. Keeney, Chief, Common Carrier Bureau, Federal Communications Commission, October 22, 1996 at 1-2 (AT&T October 22 Ex Parte); see also LDDS Reply at 14 (stating that up to two years may be necessary for the transition to detariffing).

²⁴³ AT&T October 17 Ex Parte at 4.

²⁴⁴ Ad Hoc Users Comments at 14; Letter from Henry D. Levine, Counsel to Ad Hoc Users, to William Caton, Secretary, Federal Communications Commission, October 16, 1996 (Ad Hoc Users October 16 Ex Parte); Letter from C. Douglas Jarrett, Counsel to API, to William Caton, Secretary, Federal Communications Commission, October 18, 1996 (API October 18 Ex Parte).

²⁴⁵ API Reply at 13-14 (maintaining that such a requirement would give carriers undue leverage in negotiations, and give carriers an incentive not to negotiate in good faith).

²⁴⁶ Eastern Tel Comments at 5.

²⁴⁷ We note that the effective date of this Order (*i.e.*, the date the rules and requirements promulgated by this Order will become effective) will be 30 days from the date of publication of this Order in the Federal Register. See infra para. 162.

cancellation, the Commission will accept new tariffs and revisions to the carrier's tariffs for mass market interstate, domestic, interexchange services.²⁴⁸ However, in order to preserve the legitimate business expectations of customers taking service pursuant to long-term service arrangements, and to limit the ability of carriers to unilaterally alter or abrogate such arrangements by invoking the filed rate doctrine, the Commission will not accept new tariffs, or revisions to carriers' existing tariffs, for long-term service arrangements (such as contract tariffs, AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements) during the transition period. We recognize that many such long-term service arrangements incorporate by reference mass market tariffs. By precluding carriers during the transition period from filing tariffs or revisions to tariffs for long-term service arrangements, we do not intend to limit carriers' ability to file tariffs and tariff revisions for mass market services.

91. Carriers that have on file with the Commission "mixed" tariff offerings²⁴⁹ that contain services subject to detariffing pursuant to this Order, may comply with this Order either by: (1) cancelling the entire tariff and refile a new tariff for only those services subject to tariff filing requirements; or (2) issuing revised pages cancelling the material in the tariffs that pertain to those services subject to forbearance.²⁵⁰

92. We note that, while complete detariffing will change the legal framework for long-term service arrangements, we do not intend by our actions in this Order to disturb existing contractual or other long-term arrangements. Accordingly, our detariffing policy should not be interpreted to allow parties to alter or abrogate the terms of long-term

²⁴⁸ We note that in the Sixth Report and Order, the Commission required carriers with existing services under tariffs on file with the Commission to provide those services consistent with such tariffs until they chose to cancel those tariffs. Sixth Report and Order, 99 FCC 2d at 1034. We believe that it is appropriate to allow nondominant interexchange carriers to revise their tariffs for mass market interstate, domestic, interexchange services on file with the Commission during the nine-month transition period in order to respond to changes in the market.

²⁴⁹ A "mixed" tariff offering is a tariff that includes services for which the carrier is subject to different tariff filing requirements. One example of a "mixed" tariff offering would be a tariff that contains interstate, domestic, interexchange services for which the carrier is nondominant and therefore prior to the effectiveness of this Order was subject to a one-day tariff filing requirement, as well as international services for which the carrier is nondominant and therefore subject to a one-day tariff filing requirement. Another example would occur where a carrier is dominant for certain services and nondominant for others and includes both types of services in one tariff.

²⁵⁰ As discussed below in section II.E., we determine that a carrier that has mixed tariff offerings that include interstate, domestic, interexchange services for which the carrier is nondominant, as well as international services for which the carrier is nondominant, must continue to tariff the international portions of such bundled or mixed tariff offerings. Accordingly, such a carrier must comply with this requirement. This requirement also applies to a carrier that has other types of mixed tariff offerings that are affected by this Order, such as where the carrier offers in one tariff interstate, domestic, interexchange services for which it is nondominant with other services for which the carrier is dominant.

arrangements currently on file with the Commission. Because we have determined that our action here does not entitle parties to a contract-based, or other long-term, service arrangement to take a "fresh look" at such arrangements, we need not address API's suggestion that we prohibit nondominant interexchange carriers from demanding that the terms of existing pricing arrangements be extended beyond their currently applicable terms.

93. Finally, we decline to follow Eastern Tel's suggestion that the Commission work with industry during the transition period to establish a standard contract for telecommunications services. As noted above, we believe that nondominant interexchange carriers may use various methods to provide service to their customers. We find that it would be more consistent with the pro-competitive and deregulatory objectives of the 1996 Act to allow carriers and customers freely to determine the most efficient methods for providing interexchange services without tariffs.

E. Tariff Filing Requirements for the International Portion of Bundled Domestic and International Services

1. Background

94. A number of nondominant interexchange carriers currently file bundled tariffs that include both interstate, domestic, interexchange services and international services. In the Notice, the Commission sought comment on whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings if the Commission forbears from requiring such carriers to file tariffs for their domestic services.²⁵¹ The Commission noted that it was reserving for another day, in a separate proceeding, the broader question of whether it should consider generally forbearing from requiring tariffs for international services provided by nondominant carriers.²⁵²

2. Comments

95. Several commenters support detariffing the international portions of bundled domestic and international services offered by nondominant interexchange carriers.²⁵³ Ad Hoc Users, API and AT&T argue that different tariff filing requirements for the domestic and international portions of bundled offerings would require the artificial partition of unified

²⁵¹ Notice, 11 FCC Rcd at 7160.

²⁵² Id.

²⁵³ Ad Hoc Users Comments at 11-12; Television Networks Comments at 5; API Comments at 9-10; AT&T October 17 Ex Parte at 3; AT&T October 22 Ex Parte at 2 n.3; NYNEX Comments at 2 n.3.

service arrangements, which would impose substantial costs on both customers and carriers.²⁵⁴ Ad Hoc Users also contends that different tariff rules would lead to separate minimum revenue requirements for domestic and international services.²⁵⁵ API and the Television Networks argue that international services offered by nondominant carriers should be detariffed whether or not the international services are bundled with domestic services.²⁵⁶

96. Other parties argue that the Commission should not detariff international portions of bundled offerings until nondominant international carriers are relieved generally of tariff filing requirements.²⁵⁷

97. AMSC, which provides mobile telecommunications services using satellites that cover the continental United States, Hawaii, Alaska, Puerto Rico, and the U.S. Virgin Islands, as well as adjacent international waters and northern parts of South America, urges the Commission to detariff the international portions of the offerings of nondominant CMRS providers, including its own services.²⁵⁸ AMSC argues that there is no rationale for maintenance of a tariff filing requirement for the international services of AMSC or other CMRS providers.²⁵⁹ In addition, AMSC argues that because it offers a mobile service via satellite, it cannot determine whether a call originates in a domestic or international area and that most of its international service is provided to users in international waters.²⁶⁰

3. Discussion

98. In the Notice, the Commission indicated that it would consider in a separate proceeding the question of whether it should generally forbear from requiring tariffs for international services provided by nondominant carriers, but it sought comment on whether it

²⁵⁴ Ad Hoc Users Comments at 11-12; API Comments at 9-10; AT&T October 17 Ex Parte at 3; AT&T October 22 Ex Parte at 2 n.3.

²⁵⁵ Ad Hoc Telecommunications Users Comments at 11-12.

²⁵⁶ Television Networks Comments at 5; API Reply at 12-13.

²⁵⁷ MCI Comments at 17 n.23; BT North America Comments at 2-3; Cable & Wireless Comments at 5 n.15. MCI expressed concern that, if the Commission detariffed the international portion of bundled or "mixed" tariff offerings, AT&T, which was regulated as dominant in international markets when comments in this proceeding were due, would be freed of tariff regulation in connection with its "'mixed' international offerings." MCI Comments at 17 n.23.

²⁵⁸ AMSC Comments at 1-4. The Commission detariffed AMSC's domestic services two years ago when it adopted mandatory detariffing for CMRS providers. Regulatory Treatment of Mobile Services Order, 9 FCC Rcd at 1457-58, 1479-80.

²⁵⁹ AMSC Comments at 3.

²⁶⁰ Id. at 2.

should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings.²⁶¹ There is not sufficient evidence in the record to make findings that each of the statutory criteria are met to forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings. We therefore believe that detariffing the international portions of bundled domestic and international service offerings would be better addressed as part of a separate proceeding in which the Commission can further examine the state of competition in the international market.²⁶² Accordingly, we will require nondominant interexchange carriers to continue to file tariffs for the international portions of bundled domestic and international service offerings until we find that the statutory criteria are met for international services provided by nondominant carriers. A nondominant carrier with bundled domestic and international services may comply with this Order either by cancelling its entire tariff and refiling a new tariff only for the international portions of its service offerings or by issuing revised pages that cancel the material in its tariffs which pertains to those services subject to forbearance.²⁶³ Because we will require nondominant interexchange carriers to continue to file tariffs for international services, we need not address MCI's concern that dominant international carriers might be freed from tariff requirements for the international portions of bundled domestic and international services.

99. Our decision here will not impose substantial administrative expenses on carriers or customers. In addition, to respond to concerns about the cost of partitioning bundled offerings, we are modifying our rules to permit nondominant interexchange carriers to cross reference detariffed interstate, domestic, interexchange service offerings in their tariffs for international services for purposes of calculating discounts and minimum revenue requirements.

100. We similarly find that there is insufficient record evidence in this proceeding to detariff the international portions of CMRS services, or to address AMSC's concerns with regard to its specific services at this time.

F. Effect of Forbearance on AT&T's Commitments

1. Background

101. In the AT&T Reclassification proceeding, AT&T made certain voluntary commitments that AT&T stated were intended to serve as transitional arrangements to address

²⁶¹ Notice, 11 FCC Rcd at 7160.

²⁶² See id. at 7160 n.85.

²⁶³ See supra para. 91.

concerns expressed by parties about possible adverse effects of reclassifying AT&T.²⁶⁴ These commitments concerned: service to low-income and other customers;²⁶⁵ analog private line and 800 directory assistance services;²⁶⁶ service to and from the State of Alaska and other regions subject to the Commission's rate integration policy;²⁶⁷ geographic rate averaging;²⁶⁸ changes to contract tariffs that adversely affect existing customers;²⁶⁹ and dispute resolution procedures for reseller customers.²⁷⁰ In the AT&T Reclassification Order, the Commission accepted AT&T's commitments and ordered AT&T to comply with those commitments.²⁷¹

102. In the Notice, the Commission sought comment on the effects of the Commission's complete detariffing proposal on certain of AT&T's commitments. Specifically, AT&T committed, for a period of three years, to limit any price increases for interstate analog private line and 800 directory assistance services to a maximum increase in any year of no more than the increase in the consumer price index.²⁷² AT&T also committed, for a period of three years, to file tariff changes increasing the prices of these services on not less than five business days' notice, and to identify clearly such tariff transmittals as affecting the provisions of this commitment.²⁷³ In the Notice, the Commission tentatively concluded that AT&T should remain subject to these commitments for the specified term of the commitments.²⁷⁴ The Commission therefore tentatively concluded that if we were to adopt

²⁶⁴ AT&T Reclassification Order, 11 FCC Rcd at 3283-85, 3364-68.

²⁶⁵ AT&T committed for a period of three years to offer optional calling plans, whose rates are constrained, to residential subscribers, and to provide advance notice of changes to such plans. Id. at 3315-18, 3365-66.

²⁶⁶ AT&T committed for a period of three years to limit rate increases for these services to the rate of increase of the consumer price index, and to provide advance notice of such rate increases. Id. at 3327-28, 3365.

²⁶⁷ AT&T committed to continue to comply with the Commission's rate integration policies and with the Commission's orders regarding AT&T's purchase of Alascom, Inc. Id. at 3333-34, 3364-65.

²⁶⁸ AT&T committed, inter alia, to provide advance notice of any tariffs that deaverage interstate, residential direct dial rates. Id. at 3333-34, 3349, 3365.

²⁶⁹ AT&T committed, inter alia, to comply with an agreement, for twelve months, between AT&T and the Telecommunications Resellers Association regarding changes to existing term plans. Id. at 3343-45, 3367-68.

²⁷⁰ AT&T committed, inter alia, to establish a quick and efficient process to resolve disputes with resellers. Id. at 3344-45, 3368.

²⁷¹ Id. at 3292-93, 3356, 3357.

²⁷² Id. at 3327-28, 3365.

²⁷³ Id.

²⁷⁴ Notice, 11 FCC Rcd at 7163-64.

detariffing, AT&T should be required to continue to file tariffs for these services for the term of its commitments.²⁷⁵

103. In addition, AT&T voluntarily committed, for a period of three years, to offer two optional calling plans designed to mitigate the impact of future increases in basic schedule or residential rates.²⁷⁶ The first plan is targeted to low-income customers, and the second is targeted to low-volume consumers, but is generally available to all residential customers. Moreover, AT&T agreed to file on not less than five business days' notice tariffs changing the structure of these plans or significantly increasing the cost of its basic residential service.²⁷⁷

2. Comments

104. The Pennsylvania PUC contends that AT&T should remain subject to all of its voluntary commitments as a safeguard, because AT&T has only been classified as a nondominant interexchange carrier for a short period of time.²⁷⁸ The Florida PSC suggests that AT&T should remain subject to its three-year commitment to offer calling plans intended for low-income and low-volume consumers in order to eliminate concerns about rate increases for basic long-distance rates.²⁷⁹ In contrast, several interexchange carriers contend that AT&T should not be bound by any commitments that do not apply equally to all nondominant interstate, interexchange carriers.²⁸⁰

105. AT&T states that it will abide by its commitments concerning unilateral changes to contract tariffs, but argues that it should not be subject to any additional burdens regarding contract tariffs that are not imposed on other nondominant carriers.²⁸¹ AT&T did not address its other commitments in its comments in this proceeding.

3. Discussion

106. We conclude that we should adopt the tentative conclusion in the Notice that AT&T should continue to comply with its commitments relating to 800 directory assistance

²⁷⁵ Id.

²⁷⁶ AT&T Reclassification Order, 11 FCC Rcd at 3315-16.

²⁷⁷ Id. at 3317-18.

²⁷⁸ Pennsylvania PUC Comments at 10 n.3.

²⁷⁹ Florida PSC Comments at 15-16.

²⁸⁰ MCI Comments at 18; LCI Comments at 5; LDDS Reply at 14-15.

²⁸¹ AT&T Comments at 36-37.

and analog private line services. In the AT&T Reclassification Order, the Commission acknowledged that there was evidence in the record that AT&T may have the ability to control prices for 800 directory assistance service and analog private line services, but also noted that these services generate de minimis revenues when compared to total industry revenues.²⁸² The Commission stated, therefore, that the evidence regarding AT&T's ability to control prices for these specific services did not mean that AT&T has market power in the interstate, domestic, interexchange market as a whole.²⁸³ The Commission further stated that it believed that "AT&T's voluntary commitments will effectively restrain AT&T's exercise of any market power it may have with respect to these narrow service segments."²⁸⁴ In light of the Commission's conclusions in the AT&T Reclassification Order, and AT&T's statements that its commitments serve as a transitional mechanism, we find that detariffing of analog private line and 800 directory assistance services at this time is not in the public interest, and would not meet the statutory forbearance criteria. We, therefore, require AT&T to continue to file tariffs for these services in accordance with, and for the specified term of, its commitments. AT&T will be required to cancel its tariffs for these services within nine months of the end of its three-year commitment, consistent with the requirements we have adopted for other nondominant interexchange carriers.²⁸⁵

107. AT&T has not argued in this proceeding that it should be relieved of its commitment in the AT&T Reclassification Order to offer optional rate plans targeted at low-income and other residential customers.²⁸⁶ Accordingly, we require that AT&T continue to offer an optional calling plan targeted to low-income customers and a plan targeted to low-volume customers, but which is generally available to all residential customers, until the expiration of its original commitment in the fall of 1998.²⁸⁷ In addition, we will continue to monitor AT&T's compliance with its commitments to implement a consumer outreach program to notify its customers of the availability of such plans, and to offer for three years

²⁸² AT&T Reclassification Order, 11 FCC Rcd at 3347. The Commission also stated that because other entities had expressed a desire to offer competitive 800 directory assistance service and because the revenues gained from this service are de minimis for AT&T, there was not a significant danger that AT&T would substantially raise prices for this service to the detriment of consumers. Id. at 3326-27. With respect to AT&T's analog private line services, the Commission stated that AT&T's position is unlikely to continue for long because the use of this service is declining with the advent of new digital technology. Id. at 3327.

²⁸³ Id. at 3347.

²⁸⁴ Id. The Commission also stated that it believes "that these commitments effectively address any concerns raised with respect to AT&T's provision of 800 directory assistance and analog private line services." Id. at 3327-28.

²⁸⁵ See supra section II.D.

²⁸⁶ See AT&T Reclassification Order, 11 FCC Rcd at 3315-18, 3365-67.

²⁸⁷ Id.

an interstate optional calling plan that will provide residential customers a postalized rate of no more than \$0.35 per minute for peak calling and \$0.21 per minute for off-peak.²⁸⁸

108. We note that our decision to preclude nondominant interexchange carriers from filing tariffs for interstate, domestic, interexchange services would effectively eliminate AT&T's commitments to file changes to such optional plans and to file certain changes to its average residential interstate direct dial services on not less than five business days' notice.²⁸⁹ Accordingly, consistent with AT&T's intent that its commitments serve as a transitional arrangement, we require AT&T, for the period of its commitments, to notify consumers of changes to such plans, or of changes to its average residential interstate direct dial services, under the circumstances specified in the AT&T Reclassification Order,²⁹⁰ on not less than five business days' notice.

109. Finally, we conclude that actions in this proceeding do not affect AT&T's other commitments. In our Geographic Rate Averaging Order, we found that the rules adopted in that proceeding would require AT&T to provide interexchange service at geographically averaged and integrated rates.²⁹¹ We therefore released AT&T from its commitments relating to rate integration and geographic rate averaging.²⁹² We expressly did not release AT&T from its more specific commitment to comply with the Commission's orders associated with AT&T's purchase of Alascom.²⁹³ We believe that detariffing would not affect these commitments. AT&T's commitment regarding dispute resolution procedures for resellers has no expiration date, and is also unaffected by detariffing.²⁹⁴ Finally, AT&T's commitments concerning changes to contract tariffs, quarterly performance reports on reseller order

²⁸⁸ Id.

²⁸⁹ AT&T committed to file changes to its average residential interstate direct dial services on not less than five business days' notice if those changes, (1) increase rates more than 20% for customers making more than \$2.50 in calls per month, or (2) increase average monthly charges more than \$.50 per month for customers making less than \$2.50 in calls per month, and to clearly identify such tariff transmittals as affecting the provisions of this commitment. Id. Additionally, AT&T committed to file tariff changes to its optional calling plans on not less than five business days' notice, and only in the event of a significant change in the structure of the interexchange industry (including a reprice or restructure of access rates). Id. AT&T also committed to identify such tariff transmittals as affecting the provisions of this commitment. Id.

²⁹⁰ Id.

²⁹¹ Geographic Rate Averaging Order, 11 FCC Rcd at 9600.

²⁹² Id.

²⁹³ Id.; see also AT&T Reclassification Order, 11 FCC Rcd at 3334 n.329.

²⁹⁴ Id. at 3344-45, 3368.

processing, and providing an ombudsman to resolve reseller complaints, expire by their own terms in the fall of 1996.²⁹⁵

G. Additional Forbearance Issues

110. The Secretary of Defense raises two concerns regarding the National Security and Emergency Preparedness (NSEP) system. Specifically, two services, Telecommunications Services Priority (TSP) and Government Emergency Telecommunications Service (GETS) are now provided by nondominant interexchange carriers pursuant to tariffs. Under tariffs filed to provide TSP service, circuits with NSEP designations receive priority restoral and provisioning.²⁹⁶ The Secretary of Defense argues that TSP tariffs not only establish a price for the service, but also serve as a clear sign that a carrier understands and accepts the responsibilities imposed by the Commission's TSP rules.²⁹⁷ The Secretary of Defense also expressly acknowledges, however, that TSP service could be provided on the basis of negotiated contracts.²⁹⁸ Consequently, we find no basis in the record for excluding TSP services from the requirements of this Order. The Secretary of Defense expresses concern, however, that carriers may not be aware of the TSP rules.²⁹⁹ While we concur with the Secretary of Defense that carriers must understand their responsibilities under our TSP rules, and that carriers should price such services, before an emergency occurs, we do not believe that tariffs are necessary to fulfill these functions. Rather, we conclude that carriers will be adequately informed of our TSP rules and regulations when contracts for TSP services are negotiated. In addition, we reaffirm our commitment to enforce the TSP rules and regulations, and expect that officials responsible for the NSEP TSP System will report any violations of these rules to us.

111. The second issue raised by the Secretary of Defense concerns GETS, which provides NSEP-authorized personnel priority call completion over the public switched network. The Secretary of Defense seeks assurance that GETS would not be deemed to constitute unreasonable discrimination in violation of Section 202(a) of the Communications Act.³⁰⁰ The Secretary of Defense states that the Office of the Manager of the National

²⁹⁵ AT&T committed, inter alia, to comply with an agreement, for twelve months, between AT&T and the Telecommunications Resellers Association regarding changes to existing term plans. Id. at 3343-45, 3367-68.

²⁹⁶ Policies and procedures for the TSP system are set forth at 47 C.F.R. part 64, app. A.

²⁹⁷ Secretary of Defense Comments at 2.

²⁹⁸ Id.

²⁹⁹ Id.

³⁰⁰ Id. at 3; see also Letter from James R. Keegan, Chief, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, to Carl Wayne Smith, Chief Regulatory Counsel, Telecommunications, DOD, OMNCS (Aug. 30, 1995) (dismissing as moot request for declaratory ruling that

Communications System wrote to the Commission on November 29, 1993, asking for a declaratory ruling that GETS does not violate Section 202(a).³⁰¹ The Commission later determined that the request for a declaratory ruling was moot, because "[l]awful tariffs implementing [GETS] have gone into effect."³⁰² The Secretary of Defense is concerned that the permissibility of GETS is dependent on filed tariffs.³⁰³ We conclude, however, that our decision to forbear does not affect the nondiscrimination provisions of Section 202(a). Thus, to the extent that GETS did not constitute unreasonable discrimination under tariffs, the service will not violate Section 202(a) following detariffing.

112. APCC urges the Commission not to take any action in this proceeding that may be inconsistent with or jeopardize the Commission's ongoing inquiry into operator services.³⁰⁴ In the Notice in this proceeding, the Commission indicated that it would consider operator services in another proceeding and therefore expressly stated that it was not addressing the issue of forbearance from applying Section 226 of the Communications Act, which requires operator service providers (OSP) to file informational tariffs.³⁰⁵ In the Nondominant Filing Order, the Commission, in order to minimize tariff filing burdens on carriers, permitted carriers that provide both operator services and other services to file one, single tariff under Section 203, rather than separate tariffs under Sections 203 and 226, as long as the tariff meets the requirements of both sections.³⁰⁶ As a result, the largest nondominant interexchange carriers, or their affiliates, have filed tariffs for interstate and international operator services pursuant to Section 203 rather than Section 226.³⁰⁷ Our decision to forbear from applying Section 203 tariff filing requirements to nondominant interexchange carriers for interstate, domestic, interexchange services does not relieve such carriers of the obligation to file informational tariffs pursuant to Section 226. Accordingly, any carrier that has included tariff information concerning interstate and international operator services in a Section 203 tariff must refile an informational tariff for such services, consistent with Section 226, upon

GETS is not a violation of Section 202(a) of the Act) (filed as an attachment to the Comments of the Secretary of Defense) (Keegan Letter).

³⁰¹ Secretary of Defense Comments at 3; see also Keegan Letter.

³⁰² Keegan Letter; see also Secretary of Defense Comments at 3.

³⁰³ Secretary of Defense Comments at 3.

³⁰⁴ APCC Comments at 3.

³⁰⁵ Notice, 11 FCC Rcd at 7154; see also Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996); Public Notice, DA 96-1695 (rel. Oct. 10, 1996) (seeking further comment).

³⁰⁶ Nondominant Filing Order, 8 FCC Rcd at 6755.

³⁰⁷ See Billed Party Preference for InterLATA 0+ Calls, 11 FCC Rcd at 7296 n.102.

cancelling such Section 203 tariff. Thus, our actions in this proceeding will not dictate the outcome of the Commission's inquiry into operator services.

III. BUNDLING OF CUSTOMER PREMISES EQUIPMENT

113. In the Computer II proceeding, the Commission adopted a rule requiring all common carriers to sell or lease CPE separate and apart from such carriers' regulated communications services, and to offer CPE solely on a non-tariffed basis.³⁰⁸ Carriers previously had provided CPE to customers as part of a bundled package of services.³⁰⁹ The Commission required carriers to separate the provision of CPE from the provision of transmission services, because it found that carriers' continued bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus restricting customer choice and retarding the development of a competitive CPE market.³¹⁰ The Commission acknowledged, however, that "[i]f the markets for components of [a] commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle."³¹¹

114. In the Notice, the Commission tentatively concluded that, in light of the development of substantial competition in the markets for CPE and interstate long-distance services, it was unlikely that nondominant interexchange carriers could engage in the type of anticompetitive conduct that led the Commission to prohibit the bundling of CPE with the provision, inter alia, of interstate, interexchange services.³¹² The Commission also tentatively

³⁰⁸ Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 20828, Final Decision, 77 FCC 2d 384, 496 (1980) (Second Computer Inquiry or Computer II), recon., Memorandum Opinion and Order, 84 FCC 2d 50 (1980), further recon., Memorandum Opinion and Order on Further Reconsideration, 88 FCC 2d 512 (1981); aff'd sub nom., Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983); Memorandum Opinion and Order on Further Reconsideration, FCC 84-190 (rel. May 4, 1984). Section 64.702(e) of our rules provides: "Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis." 47 C.F.R. § 64.702(e).

³⁰⁹ Second Computer Inquiry, 77 FCC 2d at 442.

³¹⁰ Id. at 443 n.52 ("In regulated markets characterized by dominant firms [like the telecommunications industry], there may be an incentive . . . to use bundling as an anti-competitive marketing strategy, e.g., to cross-subsidize competitive by monopoly services, that restricts both consumer freedom of choice as well as the evolution of a competitive marketplace.").

³¹¹ Id.

³¹² Notice, 11 FCC Rcd at 7186. The Commission stated that the CPE market "is now widely recognized to be fully competitive." Id. at 7185 (citations omitted). The Commission also noted that it had previously determined that AT&T no longer possessed market power in the overall interstate, domestic, interexchange

concluded that allowing nondominant interexchange carriers to bundle CPE with interstate, interexchange services would promote competition by allowing such carriers to create attractive service/equipment packages. The Commission therefore proposed to amend Section 64.702(e) of the Commission's rules to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange services.³¹³ The Commission sought comment on this proposal,³¹⁴ and on the effect that the proposed amendment of Section 64.702(e) would have on the Commission's other policies or rules.³¹⁵

115. A number of commenters addressing this issue support the Commission's proposal to amend Section 64.702(e) to allow nondominant interexchange carriers to bundle CPE with the provision of interstate, interexchange services,³¹⁶ while other parties oppose such an amendment.³¹⁷ Many commenters further argue that if the Commission permits bundling

market, and previously concluded that the business services market was "substantially competitive." *Id.* at 7185-86 (citations omitted).

³¹³ *Id.* at 7186.

³¹⁴ *Id.*

³¹⁵ *Id.* The Commission also sought comment on: (1) whether interexchange carriers should be required to offer separately, unbundled interstate, interexchange services on a nondiscriminatory basis if they are permitted to bundle CPE with the provision of interstate, interexchange services; and (2) whether and how the anticipated entry of local exchange carriers, in particular the BOCs, into the market for interstate, interexchange services should affect the Commission's analysis. *Id.* at 7186-87.

³¹⁶ See, e.g., AT&T Comments at 26-30; Sprint Comments at 26-29; LDDS Comments at 17-19; GCI Comments at 5-6; Excel Comments at 5-6; GTE Comments at 10-11; Bell Atlantic Comments at 5-7; PacTel Comments at 11-12; NYNEX Comments at 6-7; SBC Comments at 6-8; Frontier Comments at 7-8; USTA Comments at 3-4; US West Comments at 7-9; Rural Telephone Coalition Comments at 15; Cato Institute Comments at 4; TRA Comments at 40-42; Florida PSC Comments at 18-19; Louisiana PSC Comments at 9-11; Compaq Comments at 3-5; Ad Hoc Users Comments at 12-13; Ohio Consumers' Counsel Comments at 8-9; API Comments at 11-17. MCI supports a temporary suspension of the application of the rule for a one year trial period. MCI Comments at 24-25.

³¹⁷ ITAA Comments at 3-6; IDCMA Comments at 1-41; Consumer Electronics Retailers Coalition Comments at 2-14; Alabama PSC Comments at 9-11; Letter from William J. Johnson, Director of Telecommunications, Woolworth Corporation to William Caton, Acting Secretary, Federal Communications Commission (July 5, 1996); Letter from John A. Anheier, Director of Information Systems Services, Payless Cashways, Inc., to William Caton, Acting Secretary, Federal Communications Commission (July 9, 1996); Letter from William L. Salter, Sears, Roebuck and Co., to Reed Hundt, Chairman, Federal Communications Commission (Aug. 15, 1996); Letter from Bradley Stillman, Telecommunications Policy Director, Consumer Federation of America, to Reed Hundt, Chairman, Federal Communications Commission (Aug. 16, 1996); Letter from Jonathan Jacob Nadler, Counsel to IDCMA, Maura Colleton, Vice President -- ISEC Division, ITAA, John W. Pettit, Counsel to Consumer Electronics Retailers Coalition, Don Gilbert, Senior Vice President, National Retail Federation, and Robert M. McDowell, Deputy General Counsel, ACTA, to Reed Hundt, Chairman, Federal Communications Commission (Oct. 15, 1996); see also *ex parte* letters filed in October 1996 by the following value added resellers: Digital Connections Inc.; Datanode, Inc.; Network Communications Incorporated; Atrion

of CPE with interstate, interexchange services, it should require nondominant interexchange carriers to continue to offer unbundled interstate, interexchange services separately.³¹⁸

116. In its comments, AT&T strongly supported the Commission's proposal, but suggested that it did not go far enough, and urged the Commission also to eliminate restrictions on single-priced, bundled packages of enhanced and interexchange services offered by nondominant interexchange carriers.³¹⁹ These restrictions (which are not codified in the Commission's rules) were adopted by the Commission in the Computer II proceeding.³²⁰ AT&T maintains that such restrictions are no longer justified, in light of the Commission's findings regarding the competitiveness of the interexchange market, and because the enhanced services market is even more "robust, competitive and diverse" than the CPE market.³²¹ AT&T concludes that "the rationale underlying the Commission's proposal to eliminate the bundling restrictions for CPE and interexchange services applies equally to enhanced services,"³²² and it therefore urges the Commission to institute a supplemental notice of proposed rulemaking "to eliminate the restrictions against the bundling of interexchange services and enhanced services by nondominant interexchange carriers."³²³

117. ITAA opposes AT&T's request on the grounds that enhanced service providers ("ESPs") require access to unbundled network services at competitive prices and on

Communications Resources; Ficomp Systems, Inc.; Western Data Group, Inc.; ACA Communications; Data Connect Enterprise; Ficomp, Inc.; Smith Communications, Inc.; The Datastore Incorporated; Commercial Telecom Systems, Inc.; Atlanta Datacom, Inc.; Main Resource Incorporated; Alternative Data Communication Sources, Inc.; Source Communications Group; Voice & Data Networks, Inc.; NOVA Electronics Data Inc.; Triangle Technologies, Inc.; Glasgal Communications, Inc.; Jencom, Inc.; Datatron Network Systems, Inc.; Quantum Leap Incorporated. Finally, the Pennsylvania PUC recommended that the Commission defer action on this proposal to allow consumers to adjust gradually to a competitive environment. Pennsylvania PUC Comments at 13.

³¹⁸ GTE Comments at 11; GCI Comments at 6; Frontier Comments at 8; Florida PSC Comments at 19; Consumer Electronics Retailers Coalition Comments at 12-13; Ad Hoc Users Reply at 14; USTA Comments at 4; TRA Comments at 41-42; US West Comments at 9; PacTel Comments at 11; Tennessee Attorney General Comments at 6; API Reply at 15; Sprint Comments at 28; Louisiana PSC Comments at 10; LDDS Comments at 18; NYNEX Comments at 7. But see AT&T Comments at 27; Compaq Comments at 4-5; Cato Institute Comments at 5.

³¹⁹ AT&T Comments at 28. In its comments, MCI assumed that the proposed amendment of Section 64.702(e) would allow bundling of transmission with enhanced services as well as CPE or "any other product or service that the carrier chooses to include in a bundle." MCI Comments at 22-23 n.33.

³²⁰ See Second Computer Inquiry, 77 FCC 2d at 475.

³²¹ AT&T Comments at 29-30.

³²² Id. at 28-29.

³²³ Id. at 30.

nondiscriminatory terms in order to succeed. ITAA claims that there are only three nationwide facilities-based carriers, which ITAA contends collectively control the bulk of the interexchange market, from which ESPs can purchase the ubiquitous transmission services they require.³²⁴ ITAA maintains that AT&T's proposal would chill the growth of the enhanced services market by making ESPs vulnerable to discrimination by carriers in favor of their own enhanced services.³²⁵

118. We conclude that, at this time, we should defer action on our earlier proposal to eliminate the CPE unbundling rule. We find that AT&T's request presents issues similar to those raised in the Notice relating to the bundling of CPE with interstate, interexchange services by nondominant interexchange carriers. AT&T's request, however, also raises issues that have not been addressed in the record before us. Because we believe it is appropriate to consider the Commission's prohibitions against bundling CPE and enhanced services with interstate, interexchange services together, in a single, consolidated proceeding, we decline to act on the Commission's proposal in the Notice to amend Section 64.702(e) of the Commission's rules to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange services at this time. We intend to issue a further notice of proposed rulemaking that will address the continued applicability of the prohibitions against the bundling of both CPE and enhanced services with interstate, interexchange services by nondominant interexchange carriers.

IV. OTHER ISSUES

A. Pricing Issues

1. Background

119. In the AT&T Reclassification Order, the Commission found the evidence in the record regarding the existence of alleged tacit price coordination among interexchange carriers for basic residential services, or residential services generally to be inconclusive and conflicting.³²⁶ The Commission concluded that, if there were tacit price coordination in the interexchange market, the problem was generic to the industry and would be better addressed by removing regulatory requirements that may have facilitated such conduct.³²⁷ In the Notice, the Commission noted that its reclassification of AT&T removed one such regulatory

³²⁴ ITAA Reply at 7-8.

³²⁵ Id.

³²⁶ AT&T Reclassification Order, 11 FCC Rcd at 3313-15.

³²⁷ Id. at 3314-15.

requirement -- the longer advance notice period applicable only to AT&T.³²⁸ The Commission also observed that the 1996 Act would provide the best solution to the problem of tacit price coordination, to the extent that it exists currently, by allowing for competitive entry in the interstate interexchange market by the facilities-based BOCs.³²⁹ Moreover, the Commission tentatively concluded that complete detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers would discourage price coordination by eliminating carriers' ability to ascertain their competitors' interstate rates and service offerings from publicly-available tariffs filed with the Commission.³³⁰ The Commission sought comment on these issues.³³¹

2. Comments

120. BOCs and other commenters argue that there is substantial evidence of tacit price coordination by the largest interexchange carriers, which the BOCs claim have engaged in price signaling and increased basic rates in lock-step, despite decreasing costs.³³² Others, including a number of interexchange carriers, contend that there is no evidence of tacit price coordination, and that interexchange carriers have raised their rates for basic services because their rates were artificially kept below cost by price caps.³³³

121. Several commenters argue that the best remedy for price coordination, to the extent it exists, is competitive entry in the interstate, domestic, interexchange market.³³⁴ Other commenters argue that because the BOCs have bottleneck control over access facilities,

³²⁸ Notice, 11 FCC Rcd at 7183-84.

³²⁹ Id. (noting that increasing the number of facilities-based carriers should make tacit price coordination more difficult).

³³⁰ Id.

³³¹ Id.

³³² BellSouth Comments at 4-16; Bell Atlantic Comments at 2-3; NYNEX Comments at 4; PacTel Comments at 10-11; Pennsylvania PUC Comments at 11; Market Dynamics Comments at 16; National Association of Development Organizations Comments at 5.

³³³ AT&T Comments at 23-24; AT&T Reply at 6-9; MCI Comments at 19-22; MCI Reply at 18-19; Sprint Reply at 9-17; LDDS Comments at 11-12, 19; ACTA Comments at 11-12; 15-16.

³³⁴ Ameritech Comments at 9; BellSouth Comments at 22-24; Bell Atlantic Comments at 3; PacTel Comments at 10; NYNEX Comments at 4; Florida PSC Comments at 15; Ohio Consumers' Counsel Comments at 8; National Association of Development Organizations Comments at 5-6; National Black Data Processing Association Comments at 1-2; CSE Comments at 4-5; USTA Comments at 2-3; Chrysler Minority Dealers Association Comments at 1; Association for the Study of Afro-American Life and History Comments at 1-2.

premature BOC entry may impede competition, because the BOCs will have unfair advantages over their competitors, forcing smaller carriers from the market.³³⁵

122. Some commenters suggest that the Commission's proposal to adopt complete detariffing will impede price coordination because tariffs enable carriers to ascertain their competitors' rates, terms and conditions for service at one, central location.³³⁶ Others argue that complete detariffing will have little effect on price coordination because carriers will be able to keep track of their competitors' rates through other methods, such as through competitors' advertising and because the current streamlined tariff filing requirements prevent price signaling.³³⁷

3. Discussion

123. We find the evidence in the record regarding tacit price collusion to be inconclusive. While data presented by Bell South and Bell Atlantic could be consistent with the existence of tacit collusion among interexchange carriers,³³⁸ these data are also consistent with competition among interexchange carriers. For example, the fact that increases in AT&T's basic rates have been matched almost immediately by MCI and Sprint is consistent with a theory of evolving competition in this marketplace. Between 1991 and 1995, while interexchange carriers were increasing basic rates, they were also lowering prices to higher volume customers through increases in discounts offered via discount plans. A Commission staff study of best available rates from AT&T to callers with different calling patterns shows that between 1991 and 1995, rates for customers with long-distance bills exceeding \$10.00 per month have decreased by between 15 and 28 percent.³³⁹ By contrast, the best prices available to customers with less than \$10.00 per month of calls³⁴⁰ have risen about 16 percent since 1991.³⁴¹ This pattern is consistent with the view that, over time, interexchange carriers began

³³⁵ AT&T Comments at 24-25; ACTA Comments at 15-16; Alabama PSC Comments at 9.

³³⁶ BellSouth Comments at 17-18; Florida PSC Comments at 3; Cato Institute Comments at 4; API Comments at 5.

³³⁷ See MCI Comments at 12; Sprint Comments at 20-21; Casual Calling Coalition Comments at 6-7; Business Telecom Comments at 6; ACTA Comments at 11-12; Frontier Comments at 3-4; CFA/CU Comments at 7; LDDS Comments at 11-12; PacTel Comments at 4-5; Ameritech Comments at 8; TRA Comments at 16-17; GCI Comments at 4; Ohio Consumers' Counsel Comments at 8; Louisiana PSC Comments at 8; Pennsylvania PUC Comments at 8-9, 11; see also supra note 29.

³³⁸ See BellSouth Comments at 4-16; Bell Atlantic Comments at 2-3.

³³⁹ AT&T Reclassification Order, 11 FCC Rcd at 3312, 3362-63.

³⁴⁰ These prices are based on the basic rates, because no discount plans were generally available for those customers making less than \$10.00 per month in calls.

³⁴¹ AT&T Reclassification Order, 11 FCC Rcd at 3313.

to compete more vigorously for high volume users than for low volume users. Such a market strategy would tend to result in lower prices for higher volume, more price sensitive customers, and higher prices for lower volume, less price sensitive customers.

124. Other data not discussed by BellSouth also are more suggestive of competition than collusion among interexchange carriers. For example, in 1994 nearly 30 million customers changed their presubscribed interexchange carriers,³⁴² which is indicative of competition among interexchange carriers for customers. In addition, between 1989 and 1992, advertising expenditures by all interexchange carriers increased 85 percent, to 1.6 billion dollars, which is further evidence of increased competition among interexchange carriers and not tacit collusion.³⁴³

125. Based on the record in this proceeding, we find the evidence of tacit price coordination to be inconclusive and conflicting. In addition, we conclude that the detariffing rules we adopt today, together with additional competitive entry consistent with the provisions of the 1996 Act, provides the best solution to tacit price coordination to the extent it exists. Regarding the Alabama PSC's concern that the BOCs will have unfair advantages over their competitors and thereby will force small carriers from the market, we note that the 1996 Act provides safeguards to prevent the BOCs from engaging in anticompetitive conduct to the detriment of long-distance competitors, some of which are small nondominant interexchange carriers.³⁴⁴ We will address implementation of these safeguards in upcoming orders.³⁴⁵

B. Contract Tariff Issues

126. In the AT&T Reclassification proceeding, commenters raised certain issues regarding contract tariffs. The Commission deferred consideration of those issues to this proceeding because it found that those issues applied to all interexchange carriers and were

³⁴² See id. at 3305.

³⁴³ Michael E. Porter, Competition in the Long Distance Telecommunications Market, at 6 (Monitor Company Sept. 1993), appended to Motion for Reclassification of American Telephone & Telegraph Company as a Nondominant Carrier, CC Docket No. 79-252, filed by American Telephone and Telegraph Co. (Sept. 22, 1993).

³⁴⁴ See 47 U.S.C. § 272.

³⁴⁵ See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, Notice of Proposed Rulemaking, FCC 96-308 (rel. July 18, 1996); Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Notice of Proposed Rulemaking, 11 FCC Rcd 9054 (1996).

unrelated to the determination of whether AT&T possessed market power.³⁴⁶ In the Notice, the Commission noted that those issues would largely be mooted if, as proposed in the Notice, the Commission were to adopt a complete detariffing policy.³⁴⁷ The Commission nevertheless sought comment on those and other issues, because such issues would remain relevant if we determined not to forbear from requiring nondominant interexchange carriers to file tariffs.³⁴⁸

127. MCI and GTE agree that the tariff-related issues raised in the Notice would be largely moot if the Commission adopts complete detariffing.³⁴⁹ AT&T argues, however, that one of these issues, application of the "substantial cause" test would not be moot following adoption of a complete detariffing policy, because the substantial cause test is an integral part of the "just and reasonable" standard in section 201(b).³⁵⁰ AT&T argues that because the Commission is not proposing to forbear from applying Section 201(b), the "substantial cause" test would still apply even if the Commission adopts a complete detariffing policy.³⁵¹ No other party commented on whether these issues would remain relevant if we were to adopt a complete detariffing policy.

128. Because we are implementing complete detariffing, we conclude that the contract tariff-related issues raised in the Notice are largely moot with respect to interstate, domestic, interexchange services offered by nondominant interexchange carriers. We reject AT&T's argument that the substantial cause test would continue to apply regardless of whether we order complete detariffing. In the RCA Americom Decisions, the Commission recognized that a dominant carrier's proposal "to modify extensively a long term service tariff may present significant issues of reasonableness under Section 201(b) that are not ordinarily raised in other tariff filings."³⁵² Accordingly, the Commission held that a carrier's unilateral tariff revisions that alter material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can show "substantial cause" for the revision.³⁵³

³⁴⁶ AT&T Reclassification Order, 11 FCC Rcd at 3342.

³⁴⁷ Notice, 11 FCC Rcd at 7187.

³⁴⁸ Id.

³⁴⁹ MCI Comments at 27; GTE Comments at 8 n.11.

³⁵⁰ AT&T Comments at 33-34.

³⁵¹ Id.

³⁵² RCA American Communications Inc. Revisions to Tariff F.C.C. Nos. 1 and 2, Memorandum Opinion and Order, 84 FCC 2d at 358; Memorandum Opinion and Order, 86 FCC 2d at 1201.

³⁵³ RCA American Communications Inc. Revisions to Tariff F.C.C. Nos. 1 and 2, Memorandum Opinion and Order, 86 FCC 2d at 1201-1202; see also First Interexchange Competition Order, 6 FCC Rcd at 5898 n.155; February 1995 Interexchange Reconsideration Order, 10 FCC Rcd at 4574 n.51 (indicating that the substantial cause test would also apply to unilateral tariff modifications made by nondominant carriers).

While we recognize that the Commission may be called upon to examine the reasonableness of a nondominant interexchange carrier's rates, terms and conditions for interstate, domestic, interexchange services, for example, in the context of a Section 208 complaint proceeding, we find that following complete detariffing, we will no longer have to assess the reasonableness of modifications by such carriers to their tariffs for interstate, domestic, interexchange services. Thus, although the substantial cause test may continue to apply in other contexts, the test will no longer apply to unilateral tariff modifications by nondominant interexchange carriers regarding their interstate, domestic, interexchange services.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

129. As required by Section 603 of the Regulatory Flexibility Act (RFA),³⁵⁴ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice.³⁵⁵ The Commission sought written public comments on the proposals in the Notice, including on the IRFA.³⁵⁶ The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).³⁵⁷

A. Need for and Objectives of the Proposed Rules

130. In the 1996 Act, Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.³⁵⁸ One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets. Integral to this effort to foster competition is the requirement that the Commission forbear from applying any regulation or any provision of the Communications Act if the Commission makes certain specified findings.³⁵⁹

³⁵⁴ 5 U.S.C. § 603

³⁵⁵ Notice, 11 FCC Rcd at 7192-93.

³⁵⁶ Id. at 7193.

³⁵⁷ Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

³⁵⁸ Joint Explanatory Statement at 113.

³⁵⁹ 47 U.S.C. § 160. Section 10 of the Communications Act provides, however, that the Commission may not forbear from applying new Section 251(c) related to interconnection (except as provided in Section 251(f)) and new Section 271 related to BOC provision of interLATA services until the Commission determines that those requirements have been fully implemented. Id.

131. In this Order, the Commission proposes to exercise its forbearance authority under Section 10 of the Communications Act³⁶⁰ to detariff completely the interstate, domestic, interexchange services of nondominant interexchange carriers.³⁶¹ In addition, the Commission promulgates rules in this Order that will require nondominant interexchange carriers to make available to the public information on the rates, terms, and conditions for all of their interstate, domestic, interexchange services in order to aid enforcement of Section 254(g) of the Communications Act.³⁶² The objective of the rules adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small business entities.

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

132. In the Notice, the Commission performed an IRFA.³⁶³ In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have an impact on small business entities as defined by section 601(3) of the RFA.³⁶⁴ In addition, the IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.³⁶⁵

³⁶⁰ Id.

³⁶¹ In this Order, we also consider, but decline to act at this time on, the Commission's proposal in the Notice to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange telecommunications services. The Commission also raised issues in the Notice relating to: market definition; separation requirements for nondominant treatment of local exchange carriers in their provision of certain interstate, interexchange services; and implementation of the rate averaging and rate integration requirements in new section 254(g) of the Communications Act. On August 7, 1996, the Commission issued a Report and Order implementing the rate averaging and rate integration requirements. See Geographic Rate Averaging Order, 11 FCC Rcd 9564. We will address the market definition and separation requirements in an upcoming order.

³⁶² New Section 254(g), adopted as part of the 1996 Act, requires that a provider of interexchange telecommunications services charge its subscribers in rural and high cost areas rates that do not exceed the rates that the carrier charges subscribers in urban areas (i.e., that rates be geographically averaged). Section 254(g) also requires that providers of interexchange telecommunications services charge subscribers in each State rates that do not exceed the rates it charges subscribers in another State (i.e., that rates be integrated). 47 U.S.C. § 254(g); see also Geographic Rate Averaging Order, 11 FCC Rcd 9564 (implementing Section 254(g)).

³⁶³ Notice, 11 FCC Rcd at 7192-93.

³⁶⁴ Id. at 7193.

³⁶⁵ Id. at 7193.

1. Comments on the IRFA

133. No comments specifically address the Commission's initial regulatory flexibility analysis. Several parties, however, assert in their comments that the proposal to adopt complete detariffing would have an impact on small business entities. Several parties argue that tariffs send accurate economic signals and disseminate rate and service information so that nondominant interexchange carriers are able to price their services to compete with larger interexchange carriers.³⁶⁶ ACTA further argues that increased transaction costs in a detariffed environment -- due to the need to establish a legal relationship with customers and notify them of any modifications -- would be especially burdensome on small carriers that have fewer resources.³⁶⁷ In addition, Eastern Tel requests the Commission to work with industry, in particular small interexchange carriers, to develop a standard contract for telecommunications services, similar to the form contracts used in the real estate industry, that address such issues as the collection procedures that can be utilized.³⁶⁸ APCC, however, argues that forbearance from tariff filing requirements would eliminate a regulatory requirement that is especially burdensome on small carriers.³⁶⁹

134. Several parties contend that complete detariffing would harm small business entities that are consumers of interstate, interexchange telecommunications services, because: (1) small business customers require access to information contained in tariffs to obtain the best rates available;³⁷⁰ and (2) increased transaction costs would discourage nondominant interexchange carriers from serving certain market segments, including certain small business markets, thereby decreasing competitive choices for these small business customers.³⁷¹

135. TRA argues that detariffing would allow carriers to discriminate against resellers, many of which are small and mid-sized businesses.³⁷² TRA claims that, as a result,

³⁶⁶ Casual Calling Coalition Comments at 5-6; Business Telecom Comments at 6; Eastern Tel Comments at 4; Ursus Comments at 5.

³⁶⁷ ACTA Comments at 12-13.

³⁶⁸ Eastern Tel Comments at 5.

³⁶⁹ APCC Comments at 26.

³⁷⁰ Casual Calling Coalition Comments at 5-6, 8-9; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; GCI Comments at 3-4.

³⁷¹ LDDS Comments at 10.

³⁷² TRA Comments at 10-14; TRA Reply at 13.

the resale market will not survive.³⁷³ TRA claims that a vibrant resale market provides residential and small business customers with access to lower rates.³⁷⁴

136. In addition, several small businesses that analyze tariff information for business and residential customers argue that they need such information to conduct their businesses.³⁷⁵

2. Discussion

137. We disagree with those commenters that argue that complete detariffing will harm small nondominant interexchange carriers. As discussed in section II, we find that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among all providers of such services (regardless of size), promote competitive market conditions, and establish market conditions that more closely resemble an unregulated environment. We further find, as APCC notes, that filing tariffs imposes costs on carriers that attempt to make new service offerings. Our decision to adopt complete detariffing, therefore, should minimize regulatory burdens on all nondominant interexchange carriers, including small entities.

138. We recognize that complete detariffing may change significant aspects of the way in which nondominant interexchange carriers conduct their business. As discussed above,³⁷⁶ however, tariffs are not the only feasible way for carriers to establish legal relationships with their customers, nor will carriers necessarily need to negotiate contracts for service with each, individual customer. Carriers could, for example, issue short, standard contracts that contain their basic rates, terms and conditions for service. As discussed above,³⁷⁷ nondominant interexchange carriers that provide casual calling services have options other than tariffs by which they can establish legal relationships with casual callers, and pursuant to which such callers would be obligated to pay for the telecommunications services they use. We believe that the nine-month transition period established by this Order,³⁷⁸ will afford nondominant interexchange carriers sufficient time to develop efficient mechanisms to provide interstate, domestic, interexchange services in a detariffed environment. Moreover,

³⁷³ TRA Comments at 10-14; TRA Reply at 13.

³⁷⁴ TRA Comments at 7-8 (citing previous Commission statements on the public benefits that resale of telecommunications generates).

³⁷⁵ XIOX Comments at 1-2; MOSCOM Comments at 1-2; Network Analysis Center Comments at 1-2; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; Telecommunications Management Information Systems Coalition Comments at 5-6; Telecommunications Information Services Comments at 1-2.

³⁷⁶ See supra para. 57.

³⁷⁷ See supra para. 58.

³⁷⁸ See supra section II.D.

parties that oppose complete detariffing have not shown that the business of providing interstate, domestic, interexchange services should be subject to a regulatory regime that is not available to firms that compete in any other market in this country. We thus conclude that requiring nondominant interexchange carriers to withdraw their tariffs and conduct their business as other enterprises do will not impose undue burdens on these carriers. Moreover, we disagree with ACTA's argument that detariffing will disproportionately burden small interexchange carriers.³⁷⁹ While some of the increased administrative costs that carriers may initially incur as a result of detariffing are likely to be fixed (such as the cost of developing short, standard contracts), many such costs will vary based on the area or number of customers served by such carriers (e.g., advertising expenditures, the cost of promotional mailings or billing inserts). Nonetheless, we find that, on balance, the pro-competitive effects of relieving nondominant interexchange carriers of the obligation to file tariffs for their interstate, domestic, interexchange services outweigh any potential increase in transactional or administrative costs resulting from the shift to a detariffed environment.

139. We are also unpersuaded by the argument that complete detariffing will harm small business entities that utilize telecommunications services. Requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes competition by removing incentives for competitive price discounting, imposing costs on carriers that attempt to make new offerings, and preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs. As discussed above,³⁸⁰ complete detariffing will better protect consumers, many of which are small businesses, and will promote vigorous competition. As a result, we believe that complete detariffing will lead to lower prices for interstate, domestic, interexchange services, thereby benefitting all consumers, including small business ones. Moreover, because we do not agree that complete detariffing will substantially increase nondominant interexchange carriers' costs, we are unpersuaded that carriers will abandon segments of the market to the detriment of small business customers, as LDDS suggests.³⁸¹

140. We reject the suggestion that eliminating tariff filing requirements would impede competition by reducing information available to consumers and small nondominant interexchange carriers. As discussed above, we believe that nondominant interexchange carriers will make rate and service information, currently contained in tariffs, available to the public in a more user-friendly form in order to preserve their competitive position in the market, and as part of their contractual relationship with customers.³⁸² Nevertheless, we acknowledge that, even in a competitive market, nondominant interexchange carriers might

³⁷⁹ See ACTA Comments at 12-13.

³⁸⁰ See *supra* section II.B.2.b.

³⁸¹ See LDDS Comments at 10.

³⁸² See *supra* para. 25.

not provide complete information concerning all of their service offerings to all consumers, and that some consumers may not be able to determine which rate plan is most appropriate for them, based on their individual calling patterns. Accordingly, and in light of considerations regarding the enforcement of the 1996 Act's geographic rate averaging and rate integration requirements, we will require carriers to provide rate and service information to the public.³⁸³ This obligation will ensure that all customers, many of which are small businesses, have access to such information.

141. Finally, as discussed above,³⁸⁴ we are not persuaded that the resale market will disappear in the absence of tariffs. Our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services does not affect such carriers' obligations under Sections 201 and 202 to charge rates, and to impose practices, classifications and regulations, that are just and reasonable and not unjustly or unreasonably discriminatory. In addition, as discussed above, we are requiring nondominant interexchange carriers to provide current rate and service information on their interstate, domestic, interexchange services to consumers, including resellers.³⁸⁵ Thus, resellers will be able to determine whether nondominant interexchange carriers have imposed rates, practices, classifications or regulations that unreasonably discriminate against resellers, and to bring complaints, if necessary.

C. Description and Estimates of the Number of Small Entities to Which the Rule Will Apply

142. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.³⁸⁶ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).³⁸⁷ SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than

³⁸³ See supra paras. 84-86.

³⁸⁴ See supra para. 27.

³⁸⁵ See supra paras. 84-86.

³⁸⁶ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

³⁸⁷ 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

1,500 employees.³⁸⁸ We first discuss generally the total number of telephone companies falling within this SIC category. Then, we refine further those estimates and discuss the number of carriers falling within subcategories.

143. Total Number of Telephone Companies Affected. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.³⁸⁹ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, operator service providers, pay telephone operators, personal communications service providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities, small interexchange carriers, or resellers of interexchange services, because they are not "independently owned and operated."³⁹⁰ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order.

144. Wireline Carriers and Service Providers. SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.³⁹¹ According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.³⁹² All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than

³⁸⁸ 13 C.F.R. § 121.201.

³⁸⁹ United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

³⁹⁰ 15 U.S.C. § 632(a)(1).

³⁹¹ 1992 Census at Firm Size 1-123.

³⁹² 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

145. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of interexchange carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with Telecommunications Relay Services (TRS). According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services.³⁹³ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity interexchange carriers that may be affected by the decisions and rules adopted in this Order.

146. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services.³⁹⁴ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order.

147. In addition, the rules adopted in this Order may affect companies that analyze information contained in tariffs. The SBA has not developed a definition of small entities specifically applicable to companies that analyze tariff information. The closest applicable definition under SBA rules is for Information Retrieval Services (SIC Category 7375). The Census Bureau reports that, at the end of 1992, there were approximately 618 such firms

³⁹³ Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996).

³⁹⁴ Id.

classified as small entities.³⁹⁵ This number contains a variety of different types of companies, only some of which analyze tariff information. We are unable at this time to estimate with greater precision the number of such companies and those that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 618 such small entity companies that may be affected by the decisions and rules adopted in this Order.

148. Finally, as discussed above, some commenters contend that the rules proposed in the Notice would increase the cost of interstate, domestic, interexchange telecommunications services to small businesses.³⁹⁶ We assume that most, if not all, small businesses purchase interstate, domestic, interexchange telecommunications services. As a result, our rules in this Order would affect virtually all small business entities. SBA guidelines to the SBREFA state that about 99.7 percent of all firms are small and have fewer than 500 employees and less than \$25 million in sales or assets. There are approximately 6.3 million establishments in the SBA database.³⁹⁷ The SBA data base does include nonprofit establishments, but it does not include governmental entities. SBREFA requires us to estimate the number of such entities with populations of less than 50,000 that would be affected by our new rules.³⁹⁸ There are 85,006 governmental entities in the nation.³⁹⁹ This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.⁴⁰⁰ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that would be affected by our rules.

³⁹⁵ U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 7375 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

³⁹⁶ See supra para. 46.

³⁹⁷ A Guide to the Regulatory Flexibility Act, U.S. Small Business Administration, Washington D.C., at 14 (May 1996).

³⁹⁸ 5 U.S.C. § 601(5).

³⁹⁹ 1992 Census of Governments, Bureau of the Census, U.S. Department of Commerce.

⁴⁰⁰ Id.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

149. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order.⁴⁰¹ As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements.

150. Nondominant interexchange carriers, including small nondominant interexchange carriers, will be required to cancel all of their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months. As a result, nondominant interexchange carriers will need to establish legal relationships with their customers in an alternative way, for example, by issuing short, standard contracts that contain their basic rates, terms and conditions for service. This change in the manner of conducting their business may require the use of technical, operational, accounting, billing, and legal skills.

151. As discussed in section II.C, we are requiring nondominant interexchange carriers to make information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in at least one location during regular business hours. We will also require carriers to inform the public that this information is available when responding to consumer inquiries or complaints and to specify the manner in which the consumer may obtain the information. We further require nondominant interexchange carriers to maintain, for a period of two years and six months, the information provided to the public, as well as documents supporting the rates, terms, and conditions for all of their interstate, domestic, interexchange offerings, that they can submit to the Commission upon request. Nondominant interexchange carriers will need to maintain the foregoing records in a manner that allows carriers to produce such records within ten business days of receipt of a Commission request. In addition, nondominant interexchange carriers will be required to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. Compliance with these requests may require the use of accounting, billing, and legal skills.

152. We further require nondominant providers of interstate, domestic, interexchange telecommunications services to file annual certifications signed by an officer of the company under oath that the company is in compliance with its statutory geographic rate averaging and rate integration obligations. Compliance with these requests may require the use of accounting and legal skills.

⁴⁰¹ See 5 U.S.C. § 604(a)(4).

E. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

153. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected.⁴⁰² To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

154. We believe that our actions to adopt complete detariffing will facilitate the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of which are small business entities. Absent filed tariffs, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment. As set forth in section II.B above, we reject suggestions that we should permit carriers to voluntarily file tariffs. We believe that detariffing on a permissive basis would not definitively eliminate the possible invocation of the "filed-rate" doctrine and would create the risk of price signalling. We believe that only with complete detariffing can we definitively eliminate these possible anticompetitive practices and protect consumers, some of which are small business entities.

155. As discussed above,⁴⁰³ we also reject suggestions that we should limit our decision to forbear by differentiating among interstate, domestic, interexchange services, among nondominant interexchange carriers, or among types of information contained in tariffs for such services. We do not believe that there is a sound basis for limiting forbearance to certain interstate, domestic, interexchange services, such as individually negotiated service arrangements. We find that the competitive benefits of not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services, discussed above,⁴⁰⁴ apply equally to all segments of the interstate, domestic, interexchange services market. Moreover, as discussed above,⁴⁰⁵ we reject the argument that detariffing mass market services offered to residential and small business customers will lead to substantially higher transactions costs. Similarly, we are not persuaded that the public interest benefits differ depending on the type of tariffed information that is at issue. The public interest benefit of removing carriers' ability to invoke the "filed-rate" doctrine applies equally with respect to

⁴⁰² See id. at § 604(a)(5).

⁴⁰³ See supra paras. 41, 42, 63.

⁴⁰⁴ See supra paras. 53, 54.

⁴⁰⁵ See supra para. 57.

terms and conditions as to rates.⁴⁰⁶ In addition, permitting or requiring large nondominant interexchange carriers to file tariffs would not eliminate the risk of tacit price coordination among such carriers, and would raise the possibility that such carriers' tariffed rates would become a price umbrella.⁴⁰⁷ Finally, we agree with AT&T that there is no basis to differentiate among nondominant interexchange carriers, because all such carriers are unable to exercise market power in the interstate, domestic, interexchange market.⁴⁰⁸

156. In order to minimize the burden on nondominant interexchange carriers, and in particular small, nondominant interexchange carriers that may have fewer resources, we do not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location. We reject the suggestion that we should require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line, because we found that mandating such a requirement would be unduly burdensome at this time. Rather, we will require only that a carrier make such information available to the public in at least one location during regular business hours.⁴⁰⁹

157. The decision to impose disclosure requirements will also allow businesses, including small business entities, that audit and analyze information contained in tariffs to continue. Our decision not to require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line may impose an additional collection cost on these businesses. We find, however, that mandating such a requirement would be unduly burdensome on nondominant interexchange carriers, including small nondominant interexchange carriers.

F. Report to Congress

158. The Commission shall send a copy of this FRFA, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

⁴⁰⁶ See supra para. 55.

⁴⁰⁷ See F.M. Scherer and David Ross, Industrial Market Structure and Economic Performance 248-61 (3d ed. 1990).

⁴⁰⁸ AT&T Reply at 9-10.

⁴⁰⁹ Although we do not require carriers to make such information available to the public at more than one location, we encourage carriers to consider ways to make such information more widely available, for example, posting such information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone.

VI. FINAL PAPERWORK REDUCTION ANALYSIS

159. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13,⁴¹⁰ the Notice invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained in the Notice.⁴¹¹ The changes to our information collection requirements proposed in the Notice included: (1) the elimination of tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange telecommunications services;⁴¹² (2) the requirement that nondominant interexchange carriers maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request;⁴¹³ (3) the requirement that providers of interexchange services file certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under Section 254(g) of the Communications Act;⁴¹⁴ and (4) the requirement that interexchange carriers advertise the availability of discount rate plans throughout the entirety of their service areas.⁴¹⁵

160. On June 12, 1996, OMB approved all of the proposed changes to our information collection requirements in accordance with the Paperwork Reduction Act.⁴¹⁶ In approving the proposed changes, OMB "strongly recommend[ed] that the [Commission] investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information," which "could be provided as part of the certification process or could be made available to the public in other ways."⁴¹⁷

161. In this Order, we adopt several of the changes to our information collection requirements proposed in the Notice. Specifically, we have decided to: (1) eliminate tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange telecommunications services;⁴¹⁸ (2) require that nondominant interexchange carriers maintain

⁴¹⁰ 44 U.S.C. §§ 3501 et seq.

⁴¹¹ Notice, 11 FCC Rcd at 7193-94.

⁴¹² Id. at 7157-63.

⁴¹³ Id. at 7162-63.

⁴¹⁴ Id. at 7178, 7182.

⁴¹⁵ Id. at 7179.

⁴¹⁶ Notice of Office of Management and Budget Action, OMB No. 3060-0704 (June 12, 1996).

⁴¹⁷ Id.

⁴¹⁸ See supra para. 77.

at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request;⁴¹⁹ and (3) require that providers of interexchange services file certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under Section 254(g) of the Communications Act.⁴²⁰ We have also decided to require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents.⁴²¹ In order to implement detariffing, we order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months of the effective date of this Order and not to file any such tariffs thereafter.⁴²² We also order carriers that have on file with the Commission "mixed" tariff offerings that contain services subject to detariffing pursuant to this Order, to comply with this Order either by: (1) cancelling the entire tariff and refiling a new tariff for only those services subject to the tariff filing requirements; or (2) issuing revised pages cancelling the material in the tariffs that pertain to those services subject to forbearance.⁴²³ In addition, we have decided to require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents.⁴²⁴ Finally, consistent with OMB's recommendation that we consider mechanisms to make pricing information available to interested parties, we have decided, for purposes of enforcing Section 254(g), to require nondominant interexchange carriers to disclose to the public rate and service information concerning all of their interstate, domestic, interexchange offerings.⁴²⁵ Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

⁴¹⁹ See supra para. 87.

⁴²⁰ See supra para. 83. In the Geographic Rate Averaging Order, we found it unnecessary to adopt a requirement that interexchange carriers advertise the availability of discount rate plans and promotions throughout the entirety of their service areas. Geographic Rate Averaging Order, 11 FCC Rcd at 9578-79.

⁴²¹ See supra para. 87.

⁴²² See supra para. 89.

⁴²³ See supra para. 91.

⁴²⁴ See supra para. 87.

⁴²⁵ See supra paras. 84-86.

VI. ORDERING CLAUSES

162. Accordingly, IT IS ORDERED that, pursuant to Sections 1-4, 10, 201, 202, 204, 205, 215, 218, 220, 226 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 201, 202, 204, 205, 215, 218, 220, 226 and 254, the SECOND REPORT AND ORDER is hereby ADOPTED. The requirements adopted in this Second Report and Order shall be effective 30 days after publication in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

163. IT IS FURTHER ORDERED that Parts 42, 61 and 64 of the Commission's Rules, 47 C.F.R. §§ 42, 61, and 64 are AMENDED as set forth in Appendix B hereto.

164. IT IS FURTHER ORDERED that, AT&T SHALL DETARIFF 800 Directory Assistance and Analog Private Line Services within nine months of the end of its three-year commitment period established in Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier, Order, 11 FCC Rcd 3271, 3305-07 (1995). During this commitment period, any tariff revisions that propose to increase the price of these services SHALL BE FILED on not less than five business days' notice, shall be within the limits established in the commitment and shall clearly identify such tariff transmittals as affecting the provisions of this commitment.

165. IT IS FURTHER ORDERED that, for the period of its commitment, AT&T SHALL NOTIFY its customers of changes to its low volume and low income calling plans not less than five business days' prior to such a change. AT&T SHALL PROVIDE five business days' notice of changes to its average residential interstate direct dial services under the circumstances specified in Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier, Order, 11 FCC Rcd 3271, 3305-07 (1995).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A
LIST OF PARTIES
(CC Docket No. 96-61)

List of Commenters in CC Docket No. 96-61, Sections III, VII, VIII, IX (Tariff Forbearance, CPE Bundling, Contract Tariff, Other Issues)

Ad Hoc Coalition of Corporate Telecommunications Managers (Corporate Managers)
Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House
Association, The New York Clearing House Association, ABB Business Services, Inc.,
and The Prudential Insurance Company of America (Ad Hoc Users)
America's Carriers Telecommunication Association (ACTA)
American Petroleum Institute (API)
American Public Communications Council (APCC)
American Telegram Corporation (American Telegram)
Ameritech
AMSC Subsidiary Corporation (AMSC)
AT&T Corp. (AT&T)
Association for The Study of Afro-American Life and History, Inc
Audits Unlimited, Inc. (Audits Unlimited)
BT North America Inc. (BT North America)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Business Telecom, Inc. (Business Telecom)
Cable & Wireless, Inc. (Cable & Wireless)
Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner
Broadcasting System, Inc. (Television Networks)
Casual Calling Coalition
Cato Institute
Citizens for a Sound Economy Foundation (CSE)
Chrysler Minority Dealers Association
Compaq Computer Corporation (Compaq)
Competitive Telecommunications Association (CompTel)
Consumer Electronics Retailers Coalition
Consumer Federation of America and Consumers Union (CFA\CU)
Eastern Tel Long Distance Service, Inc. (Eastern Tel)
Excel Telecommunications, Inc. (Excel)
Frontier Corporation (Frontier)
Fone Saver, LLC (Fone Saver)
General Communication, Inc. (GCI)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Gerald Hunter (Hunter)
Independent Data Communications Manufacturers Association (IDCMA)

Information Technology Association of America (ITAA)
LCI International Telecom Corp. (LCI)
LDDS World Com (LDDS)
Louisiana Public Service Commission (Louisiana PSC)
MCI
MFS
Dr. Robert Self dba Market Dynamics (Market Dynamics)
MOSCOM Corporation (MOSCOM)
National Association of Attorneys General, Consumer Protection Committee,
Telecommunications Subcommittee (National Association of Attorneys General
Telecommunications Subcommittee)
National Association of Development Organizations -- Paraquad --United Homeowners
Association -- National Hispanic Council on the Aging -- Consumers First -- National
Association of Commissions for Women (National Association of Development
Organizations)
National Black Data Processors Association
National Bar Association
Network Analysis Center, Inc.
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Pacific Telesis (PacTel)
Pennsylvania Public Utility Commission (Pennsylvania PUC)
SBC Communications Inc. (SBC)
Scheraga and Sheldon Associates (Scheraga and Sheldon)
Secretary of Defense
Sprint Corporation (Sprint)
State of Alaska (Alaska)
Telecommunications Information Services (TIS)
Telecommunications Management Information Systems Coalition
Telecommunications Research and Action Center (TRAC)
Telecommunications Resellers Association (TRA)
Tennessee Attorney General
URSUS Telecom Corp. (Ursus)
United States Telephone Association (USTA)
US West, Inc. (U.S. West)
UTC
WinStar Communications, Inc. (WinStar)
XIOX Corporation (XIOX)

List of Reply Commenters in CC Docket No. 96-61, Sections III, VII, VIII, IX (Tariff Forbearance, CPE Bundling, Contract Tariff, Other Issues)

Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America (Ad Hoc Users)
American Petroleum Institute (API)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Casual Calling Coalition
Citizens Utilities Company (Citizens Utilities)
Consumer Electronics Retailers Coalition
Eastern Tel Long Distance Service, Inc. (Eastern Tel)
Frontier Corporation (Frontier)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Independent Data Communications Manufacturers Association (IDCMA)
Information Technology Association of America (ITAA)
LCI International Telecom Corp. (LCI)
LDDS World Com (LDDS)
Louisiana Public Service Commission (Louisiana PSC)
MCI
MFS
New York State Department of Public Service
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Pacific Telesis (PacTel)
Pennsylvania Public Utility Commission (Pennsylvania PUC)
Sprint Corporation (Sprint)
Telecommunications Management Information Systems Coalition
Telecommunications Research and Action Center (TRAC)
Telecommunications Resellers Association (TRA)
US West, Inc. (U.S. West)
WinStar Communications, Inc. (WinStar)
XIOX Corporation (XIOX)

List of Commenters in CC Docket No. 96-61, Sections IV, V, VI (Market Definition, Separation Requirements, Rate Averaging and Rate Integration)

Alabama Public Service Commission (Alabama PSC)*
America's Carriers Telecommunication Association (ACTA)
American Petroleum Institute (API)
American Public Communications Council (APCC)

Ameritech
AMSC Subsidiary Corporation (AMSC)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Cable & Wireless, Inc. (Cable & Wireless)
Columbia Long Distance Service, Inc. (CLDS)
Competitive Telecommunications Association (CompTel)
Commonwealth of the Northern Mariana Islands
Florida Public Service Commission (Florida PSC)*
Frank Collins
Frontier Corporation (Frontier)
General Communication, Inc. (GCI)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Governor of Guam & the Guam Telephone Authority
Guam Public Utility Commission (Guam PUC)
Harvey William Ward (Ward)
Iowa Utilities Board
IT&E Overseas, Inc.
JAMA Corporation
John Stauralakis, Inc.
Kevin Loflin (Loflin)
Kristine Stark (Stark)
LDDS WorldCom (LDDS)
Louisiana Public Service Commission (Louisiana PSC)
MCI
MFS
Michael Sussman (Sussman)
Missouri Public Service Commission (Missouri PSC)*
National Association of Regulatory Utilities Commissioners (NARUC)*
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Pacific Telesis Group (PacTel)
Paul Lee (Lee)
Peggy Orlic (Orlic)
Pennsylvania Office of Consumer Advocate*
Pennsylvania Public Utility Commission (Pennsylvania PUC)
Public Utilities Commission of Ohio
Rural Telephone Coalition
Scherer Communications Group
SBC Communications, Inc. (SBC)
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)

State of Alaska (Alaska)
State of Hawaii (Hawaii)
TCA, Inc.
TDS Telecommunications Corp.
Telecommunications Resellers Association (TRA)
United States Telephone Association (USTA)
U.S. West, Inc. (U.S. West)
Vanguard Cellular Systems, Inc.
Washington Utilities & Transportation Commission
Zankle Worldwide Telecom (ZWT)*

List of Reply Commenters in CC Docket No. 96-61, Sections IV, V, VI (Market Definition, Separation Requirements, Rate Averaging and Rate Integration)

ALLTEL Corporate Services, Inc.
Ameritech
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Citizens Utilities Company (Citizens Utilities)
Commonwealth of the Northern Mariana Islands
Competitive Telecommunications Association (CompTel)
General Communication, Inc. (GCI)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Governor of Guam & the Guam Telephone Authority
Guam Public Utility Commission (Guam PUC)
LDDS WorldCom (LDDS)
MCI
MFS
Missouri Office of the Public Counsel
New York State Department of Public Service
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers Counsel (Ohio Consumers' Counsel)
PCI Communications, Inc.
Rural Telephone Coalition
SBC Communications Inc. (SBC)
Sprint Corporation (Sprint)
State of Alaska (Alaska)
State of Hawaii (Hawaii)
Telecommunications Resellers Association (TRA)
United States Telephone Association (USTA)
U.S. West, Inc. (U.S. West)
Vanguard Cellular Systems, Inc.

APPENDIX B -- RULES**AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS**

Parts 42, 61 and 64 of Title 47 of the Code of Federal Regulations are amended as follows:

**PART 42 -- PRESERVATION OF RECORDS OF
COMMUNICATION COMMON CARRIERS**

1. The authority citation for part 42 continues to read as follows:

AUTHORITY: Sec. 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(i). Interprets or applies secs. 219 and 220, 48 Stat. 1077-78, 47 U.S.C. 219, 220.

2. New section 42.10 and a preceding centered heading are added to read as follows:

Specific Instructions for Carriers Offering Detariffed Interexchange Services**§ 42.10 Public availability of information concerning detariffed interexchange services.**

A nondominant interexchange carrier shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its detariffed interstate, domestic, interexchange services. Such information shall be made available in an easy to understand format and in a timely manner. When responding to an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information.

3. New section 42.11 is added to read as follows:

§ 42.11 Retention of information concerning detariffed interexchange services.

(a) A nondominant interexchange carrier shall maintain, for submission to the Commission upon request, price and service information regarding all of the carrier's detariffed interstate, domestic, interexchange service offerings. The price and service information maintained for purposes of this subparagraph shall include, but not be limited to, the information that such carrier makes available to the public pursuant to section 42.10, as well as documents supporting the rates, terms, and conditions of the carrier's detariffed interstate, domestic, interexchange offerings. The information maintained pursuant to this subsection shall be maintained in a manner that allows the carrier to produce such records within ten business days.

(b) The price and service information maintained pursuant to this section shall be retained for a period of at least two years and six months following the date the carrier ceases to provide services pursuant to such rates, terms and conditions.

(c) A nondominant interexchange carrier shall file with the Commission, and update as necessary, the name, address, and telephone number of the individual(s) designated by the carrier to respond to Commission inquiries and requests for documents about the carrier's detariffed interstate, domestic, interexchange services.

PART 61 -- TARIFFS

4. The authority citation for part 61 continues to read as follows:

AUTHORITY: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

5. Section 61.3 is amended by revising paragraph (jj) to read as follows:

§ 61.3 Definitions.

* * * * *

(jj) Tariff publication, or publication. A tariff, supplement, revised page, additional page, concurrence, notice of revocation, adoption notice, or any other schedule of rates or regulations filed by common carriers.

* * * * *

6. Sections 61.20 through 61.23 are redesignated as sections 61.21 through 61.24, and new section 61.20 is added to read as follows:

§ 61.20 Detariffing of interstate, domestic, interexchange services.

Except as otherwise provided by Commission order, carriers that are nondominant in the provision of interstate, domestic, interexchange services shall not file tariffs for such services.

7. Section 61.72 is amended by revising introductory paragraph (a) and paragraph (b) to read as follows:

§ 61.72 Posting.

(a) Offering carriers must post (i.e., keep accessible to the public) during the carrier's regular business hours, a schedule of rates and regulations for those services subject to tariff

filing requirements. This schedule must include all effective and proposed rates and regulations pertaining to the services offered to and from the community or communities served, and must be the same as that on file with the Commission. This posting requirement must be satisfied by the following methods:

* * * * *

(b) The posting of rates and regulations for those services pursuant to paragraph (a) of this section shall be considered timely if they are available for public inspection at the posting locations within 15 days of their filing with the Commission.

8. Section 61.74 is amended by adding new paragraph (d) to read as follows:

§ 61.74 References to other instruments.

* * * * *

(d) A tariff for international services offered by a carrier that is subject to detariffing for domestic, interstate, interexchange services, may reference other documents or instruments concerning the carrier's detariffed domestic, interstate, interexchange service offerings. A tariff for international services may contain such a reference if, and only if, it is necessary to incorporate information regarding the carrier's detariffed domestic, interstate, interexchange services in order to calculate discounts and minimum revenue requirements for international services provided in combination with detariffed domestic, interstate, interexchange services. Notwithstanding any such reference to documents or instruments concerning the carrier's detariffed domestic, interstate, interexchange service offerings, a tariff for international services shall specify rates, terms and conditions for the international service.

PART 64 --MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

9. The authority citation for part 64 is revised to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 254, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, 254, unless otherwise noted.

10. New subpart S consisting of section 64.1900 is added to part 64 to read as follows:

Subpart S -- Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

- 64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.

Subpart S -- Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

- § 64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.**

(a) A nondominant provider of interexchange telecommunications services, which provides detariffed interstate, domestic, interexchange services, shall file with the Commission, on an annual basis, a certification that it is providing such services in compliance with its geographic rate averaging and rate integration obligations pursuant to section 254(g) of the Communications Act of 1934, as amended.

(b) The certification filed pursuant to paragraph (a) of this section shall be signed by an officer of the company, under oath.

Separate Statement of

Commissioner Rachelle B. Chong

Re: *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61; Implementation of Section 254(g) of the Communications Act of 1934, as amended.*

By this action, the Commission exercises its new forbearance authority to implement a mandatory detariffing policy for interstate, domestic, non-dominant interexchange carriers. I support eliminating the tariff filings of interexchange carriers because I believe that we ought to treat the long distance market like any other competitive business. I am confident that consumers will be the ultimate beneficiaries of the many benefits, such as lower prices and more choices, that will flow from our new forbearance policy.

I write separately, however, to express my disagreement with the Commission's decision that in essence continues to restrict nondominant interexchange carriers from bundling customer premises equipment ("CPE") with interstate, interexchange services. I would have preferred that we follow the path set forth in our Notice that nondominant, interexchange carriers would be allowed to bundle CPE with interstate, interexchange services. The CPE bundling restriction was adopted during the era of the Bell System. At that time, this restriction made sense. It promoted consumer choice by protecting an emerging CPE industry from potential anticompetitive activity by a carrier that could leverage its monopoly market power in transmission services into its provision of CPE.

During the past decade and a half, we have witnessed a transformation in both the CPE and long distance markets. Vigorous competition now exists in the CPE market and the Commission has already determined that no domestic interexchange carrier has market power in the provision of long distance service.¹ Moreover, no interexchange carrier currently provides long distance service and CPE on a vertically integrated basis. In sum, I believe that the competitive nature of both of these markets has eroded the basic premise for the existence of the CPE bundling restriction established in the 1980's.

Finally, I question the wisdom of today's decision with respect to raising issues relating to our rule prohibiting bundling of *enhanced services* with interstate, interexchange services. I remain unconvinced that the *enhanced service*/interstate, interexchange service bundling issue should prevent us from moving forward to eliminate the *CPE*/interstate, interexchange services bundling restriction. I view the question of whether we should eliminate the prohibitions against bundling CPE and long distance services as separate and distinct from issues related to the bundling of enhanced services and long distance services. Unfortunately, today's decision may create an unnecessary and artificial linkage between these issues.

¹ *Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier*, Order, 11 FCC Rcd 3271 (1995).